

STATE OF MICHIGAN

IN THE SIXTH CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff,

V

No. 07 214651FC

STEVEN LINDSEY MCBURNEY

Defendant

OAKLAND
COUNTY

07-214651-FC



JUDGE DANIEL P. O'BRIEN
PEOPLE v MCBURNEY, STEV

JURY HEARING

BEFORE HONORABLE DANIEL PATRICK O'BRIEN

FEBRUARY 22, 2008

* * * *

BY: DANIEL P. O'BRIEN
CLERK OF DISTRICT COURT
OAKLAND COUNTY CLERK

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APPEARANCES:

Sarah Pope Starnes, Esq.
On behalf of the People

Robert White, Esq.
On behalf of Defendant

Barbara Reznick, Court Reporter

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Pontiac, Michigan

FRIDAY, FEBRUARY 22, 2008

* * *

THE CLERK: The Court calls People
versus McBurney, case number 07 214651 FC.

MS. POPE-STARNES: Sarah Pope-Starnes
appearing on behalf of the People.

THE COURT: Good morning.

MR. WHITE: Robert White appearing on
behalf of Mr. McBurney.

THE COURT: Good morning.

The witness ready to proceed?

MR. WHITE: A couple of matters.

THE COURT: I knew it. That's why I
didn't want to ask the question.

Is she available though, ready? Is she ready,
Ms. Pope-Starnes?

MS. POPE-STARNES: Yes. She's right
outside.

THE COURT: Okay. Go ahead.

MR. WHITE: I have proposed Exhibit A,
the certified copy of the St. Joseph's Mercy Hospital
records.

THE COURT: Okay.

MR. WHITE: I have showed them to sister

1 Counsel umm --- and I move for their entry.

2 THE COURT: Okay.

3 MS. POPE-STARNES: No objections.

4 THE COURT: That's Exhibit ---

5 MR. WHITE: (Interposing) And ---

6 MS. POPE-STARNES: (Interposing) A.

7 THE COURT: (Continuing) A. No

8 objection so ---

9 MR. WHITE: (Interposing) A.

10 THE COURT: Exhibit A. No objection.

11 So admitted.

12 Go ahead.

13 MR. WHITE: Uh --- if I may inquire is
14 the complete medical records of U of M going to be
15 produced?

16 MS. POPE-STARNES: My investigator umm -
17 -- was able to contact both hospitals yesterday and
18 we were at --- in Ann Arbor at eight o'clock (8:00)
19 picking up everything. But because of the roads
20 it's not here at eight-thirty (8:30). So he's
21 supposed to bring them down to us as soon as he
22 arrives.

23 MR. WHITE: Okay. Very good.

24 THE COURT: Okay. Great.

25 MR. WHITE: With that can I just before

1 I lose track?

2 THE COURT: Yeah. Go ahead. Go
3 ahead.

4 MR. WHITE: Now A has been admitted. B
5 has been admitted.

6 THE COURT: Go ahead.

7 MR. WHITE: Not C.

8 MS. POPE-STARNES: I'm sorry. What was
9 B?

10 MR. WHITE: B is the photos.

11 THE COURT: A group of photos.

12 MS. POPE-STARNES: Thank you.

13 MR. WHITE: A is St. Joseph's Hospital
14 records. B is a book of photos. C I'm going to
15 offer this morning. D has been admitted.

16 MS. POPE-STARNES: D? I'll ask after
17 he's all done.

18 MR. WHITE: H, I and J, those are all
19 large photos. Excuse me, J is the crib.

20 THE COURT: Correct. That's what my
21 notes are showing.

22 MR. WHITE: What was denied admission
23 was the three large photos E, F, and G.

24 THE COURT: I'm looking for E. I have
25 F as in Frank and G as in good. I don't have any

1 note for E as in excellent.

2 Do you show that Barb?

3 THE COURT REPORTER: E and F, no.

4 THE COURT: You don't show an E?

5 THE COURT REPORTER: No. D, I and H,
6 yes.

7 THE COURT: Where is E Mr. White?

8 MR. WHITE: E was a large picture of the
9 crib.

10 THE COURT: I don't know if that one was
11 offered.

12 MR. WHITE: I did not offer it?

13 MS. POPE-STARNES: I think that ---

14 MR. WHITE: (Interposing) It was
15 already contained in the book.

16 THE COURT: You want to move for it
17 right now in case I make the same decision?

18 MR. WHITE: All right.

19 THE COURT: You won't have to hear me on
20 the record?

21 MR. WHITE: Sure. Sure.

22 I ask you Proposed Exhibit E, I move for its
23 admission.

24 MS. POPE-STARNES: And I would have the
25 same objection. One or the other, either the one

1 from the book or this one.

2 MR. WHITE: Okay.

3 With that Judge, you made your ruling.

4 THE COURT: Okay.

5 I'll deny its admission as duplicative. If you
6 choose to, we can --- I don't want to confuse the
7 matters but if you choose to put the big one in and
8 take the little one out, but I've ruled as to that.

9 MR. WHITE: Okay.

10 THE COURT: Leave it at that.

11 MR. WHITE: I just wanted to make sure
12 before I lose track.

13 THE COURT: Gotcha. No, that's fine.

14 MR. WHITE: So, all right.

15 So E, F, and G have been excluded. C has not
16 been offered yet. A, B, D, H, I, J have been
17 admitted.

18 THE COURT: Thank you.

19 MR. WHITE: Thank you.

20 MS. POPE-STARNES: And my question is
21 simply, the records of Doctor Adams and Doctor
22 Lipkin, are they marked and what letters are they?

23 MR. WHITE: I have not marked Doctor
24 Adams. Doctor Adams is the pediatrician who has not
25 testified yet. And he will be producing his records

1 as part of his testimony.

2 MS. POPE-STARNES: Okay.

3 MR. WHITE: It's Doctor Piro and Doctor
4 Lipkin.

5 MS. POPE-STARNES: Okay.

6 MR. WHITE: I have not lettered those
7 yet and my process server is going today to serve
8 subpoenas for certified copies of those records.

9 THE COURT: Okay. Good enough.

10 All right. Thanks.

11 MS. POPE-STARNES: Thank you.

12 THE COURT: Can you bring in your
13 witness, Ms. Pope-Starnes?

14 And Jeff, you can get the Jury assembled and
15 ready.

16 MS. POPE-STARNES: Judge?

17 THE COURT: Yes?

18 MS. POPE-STARNES: We're going to need a
19 minute.

20 THE COURT: Okay.

21 THE CLERK: All rise for the Jury.

22 (Whereupon the Jury was returned to the courtroom at
23 9:25am.)

24 * * *

25 THE COURT: Good morning everyone.

1 All set to go or is he ---

2 A VOICE: I just need to grab my
3 notebook.

4 THE COURT: Okay.

5 Jeff can you grab it?

6 THE CLERK: Yes, Judge.

7 THE COURT: All right.

8 You may all be seated.

9 And before you sit Ma'am, we'll just have you
10 sworn one more time since it's another day.

11 Do you swear that the testimony you are about to
12 give will be the truth, so help you God?

13 THE WITNESS: I do.

14 THE COURT: Okay. If you'll have a seat
15 there.

16 Case has been called. Counsels' names have been
17 noted.

18 Again, good morning everyone.

19 We are on cross-examination I believe Mr. White,
20 correct?

21 MR. WHITE: That is correct.

22 THE COURT: You may proceed.

23 H E A T H E R M C B U R N E Y

24 WAS THEREUPON CALLED AS A WITNESS HEREIN, AND AFTER
25 HAVING BEEN FIRST DULY SWORN TO TELL THE TRUTH, THE

1 2HOLE TRUTH, AND NOTHING BUT THE TRUTH WAS EXAMINED
2 AND TESTIFIED AS FOLLOWS:

3 CONTINUED CROSS-EXAMINATION

4 BY MR. WHITE:

5 Q I just have one more question while the notepad is
6 being brought in.

7 THE COURT: Oh okay.

8 Q **(By Mr. White, continuing)** Heather, I'm going to
9 show you proposed Exhibit C.

10 A Okay.

11 Q Do you recognize this?

12 A Yes.

13 Q Okay.

14 Does this picture accurately depict your home?

15 A Yes.

16 Q On 311 Scott Street in South Lyon?

17 A Yes.

18 Q As of November thirtieth (30th), two thousand six
19 (2006)?

20 A Yes.

21 Q Okay.

22 MR. WHITE: I move for its entry.

23 MS. POPE-STARNES: No objection.

24 THE COURT: So admitted.

25 MR. WHITE: I have nothing further at this

1 time Judge.

2 THE COURT: Thank you.

3 Ms. Pope-Starnes.

4 A little bit of an easier podium?

5 MS. POPE-STARNES: Did you change it?

6 THE COURT: Sure did.

7 MS. POPE-STARNES: I'm sorry, Judge. I
8 didn't notice.

9 THE COURT: I was working all night in my
10 shop on that thing.

11 MS. POPE-STARNES: Thank you. I
12 appreciate that.

13 THE COURT: I wouldn't trust it though.

14 MS. POPE-STARNES: I like it. It's
15 smaller.

16 **REDIRECT EXAMINATION**

17 **BY MS. POPE-STARNES**

18 **Q** Okay.

19 Mrs. McBurney, I just --- I just have a few
20 questions for you.

21 When --- what was Madison's due date?

22 **A** Umm --- December twenty-seventh (27th), two thousand
23 five (2005).

24 **Q** So it was the same day she was born?

25 **A** Yes.

1 Q The photographs in Defense Exhibit B, the book of
2 photographs of the family?

3 A Yes.

4 Q In that book there are photographs of the Defendant
5 and Madison.

6 Do you know who took those photographs?

7 A I did.

8 Q Now on cross-examination you testified that on uh ---
9 October twenty-seventh (27th), Madison went to Doctor
10 Adams for her first cold and then she was back in on
11 November third um --- because she was still having
12 some problems with some fever and some other issues.

13 Did she get better from that?

14 A After she was started on antibiotic, yes.

15 Q Okay.

16 And did that resolve itself?

17 A Yes.

18 Q Now you testified that she had an MRI at St. Jo's,
19 excuse me, University of Michigan Hospital on August
20 thirty-first (31st) and subsequent to that she was
21 given a CAT scan on September eleventh (11th) of two
22 thousand and six (2006)?

23 A Yes.

24 Q Okay.

25 Did you --- were you able to confirm with the

1 doctors the results of that examination?

2 A Umm --- results were given to Doctor Adams.

3 Q Okay.

4 And were you able to confirm that he received
5 those results?

6 A Yes.

7 Q Okay.

8 And was any further treatment ordered?

9 A No.

10 Q Now I'd like to talk to you about your testimony about
11 the February sixteenth (16th) of two thousand and six
12 (2006) incident when Madison was taken to St. Jo's of
13 Ann Arbor emergency room.

14 A Yes.

15 Q Who was home with Madison when that happened?

16 A Steve.

17 Q Was there anyone else there?

18 A No.

19 Q And I believe you testified that uh --- he told you
20 that he'd been carrying her in a bouncy seat and he
21 tripped and fell?

22 A Umm --- yes. He lost --- he said he lost his balance
23 coming around the futon and fell carrying her.

24 Q Where is the futon in your home?

25 A Umm --- it's in the office.

- 1 Q What's the flooring in that room?
- 2 A Carpet.
- 3 Q Is there padding underneath?
- 4 A I believe so.
- 5 Q And did he tell you how far Madison fell?
- 6 A Not that I remember, no.
- 7 Q How tall is your husband?
- 8 A I believe he is five-nine (5'9").
- 9 Q What was Madison's demeanor when you saw her after
- 10 that incident?
- 11 A Umm --- she was fine.
- 12 Q Was she crying, fussy, whining, any of those things?
- 13 A No.
- 14 Q Did you observe any visible injuries?
- 15 A I did not see any, no.
- 16 Q Did you look at her?
- 17 A Yes.
- 18 Q After you took her to St. Jo's emergency room where
- 19 they examined her and she was released, did you
- 20 observe any concerning signs?
- 21 A No.
- 22 Q You also testified on cross-examination, I believe,
- 23 that your parents had come to your home four or five
- 24 times for visits?
- 25 A Yes.

1 Q But that also they would come to some friends' homes
2 in Howell and that sometimes you would go to visit
3 there?

4 A Yes.

5 Q About how many times did you visit them with Madison
6 at their friends' home in Howell?

7 A Umm --- I'd say five or six times.

8 Q Was there ever anywhere else that you would visit with
9 them besides their friends' home or your home or their
10 home?

11 A Umm --- visit, I'm sorry? Visit with my parents?

12 Q Yes.

13 A Umm --- no.

14 Q Now on cross-examination when you testified again
15 about your day with Madison on November thirtieth
16 (30th) of two thousand and six (2006), you talked
17 about a couple of times when you were changing her she
18 would pout her lip out?

19 A Yes.

20 Q Okay.

21 Now as I understand it, you had previously
22 testified that twice when you laid her down for naps
23 that day you didn't see that reaction?

24 A No.

25 Q Was Madison verbal at that time?

1 A Umm --- just she would just babble.

2 Q Okay.

3 A Umm --- she didn't have any words yet, no.

4 Q Well was she able to tell you if she had an upset
5 stomach or a headache?

6 A No.

7 Q Was she fussing at her head at all that day?

8 A With her head?

9 Q Yes.

10 A Umm --- not that I noticed, no.

11 Q Well please help me understand how was it that you
12 knew that she had a headache?

13 A I was just assuming that she was --- felt
14 uncomfortable. She was relieved. She would stop
15 pouting when she was laid down. Umm --- I just
16 thought she was achy, maybe had a headache because she
17 wasn't feeling well. It was just an assumption.

18 Q So you don't know do you whether or not she had a
19 headache?

20 A No.

21 Q Now you testified on cross-examination about an
22 incident where Madison lost her balance when she was
23 sitting on the carpet and tipped back and her head hit
24 the carpet?

25 A Yes.

1 Q That's the first time you've ever told anybody about
2 that isn't it?

3 A The first time I was asked about it, yes.

4 Q Did you tell the police about that at the hospital?

5 A Not that I remember, no.

6 Q When the doctors at the hospital asked you for a
7 history while they were trying to figure out what was
8 wrong with Madison, did you tell them about that?

9 A In the emergency room?

10 Q Any of the doctors?

11 A I know that I told them that she was --- they would
12 ask if she walking and fell over. I don't know for
13 sure if I said that she --- of that incident, no.

14 Q Well ---

15 A (Interposing) I did explain how she would tip over
16 though. She was not completely steady yet.

17 Q But you testified yesterday she was not walking yet?

18 A Correct. That's what they would usually ask first.

19 Q After this --- well let me ask you this. This
20 incident that you're talking about where she was
21 sitting on the carpet and tipped over, when did that
22 happen?

23 A She was, I don't know an exact day. She was about
24 ten months old.

25 Q So approximately when does that mean?

1 A Umm --- it would have been in November.

2 Q As a nurse are you familiar with the signs to watch
3 for when someone has a concussion?

4 A Yes.

5 Q What kind of symptoms do you watch for?

6 A Umm --- lethargic, umm --- change in your mental
7 status. Umm --- umm --- that's all I can think of
8 right now really.

9 Q Okay.

10 Did you see any of those signs after that
11 incident?

12 A No.

13 Q Did Madison ever --- was she ever involved in a car
14 accident?

15 A No.

16 Q Did she ever fall from more than one story?

17 A No.

18 Q Were you responsible for her injuries on November
19 thirtieth (30th) of two thousand and six (2006)?

20 A No.

21 Q You testified on cross-examination about her being
22 tired and clingy on November thirtieth (30th)?

23 A Yes.

24 Q Had she ever had days before where she was tired?

25 A Yes.

1 Q Had she ever had days before that she was clingy?

2 A Yes.

3 Q You also testified on cross-examination that you
4 recalled telling someone at the hospital when you were
5 giving history about the MRSA?

6 A Yes.

7 Q Do you recall who you told?

8 A Umm --- I mentioned it more than once. I don't know
9 who all I told about it.

10 Q You testified that when you were first in the
11 pediatric intensive care unit with Madison that she
12 was responsive to your touch?

13 A Yes.

14 Q How did she respond to your touch?

15 A She would move her foot away if I touched her foot.
16 She would kind of grasp a little bit with her hand if
17 I touched her hand. And when they would suction her
18 out she would suck on the hose. That's about all she
19 did. She moved her arm a little bit once.

20 Q And how did she move her arm?

21 A Just it --- she had --- they had --- they had like a
22 little board underneath her arm because her IV was
23 there. But she would just --- she just moved her arm
24 up one time.

25 Q Okay.

1 Do you know what posturing is?

2 A Yes.

3 Q Was she doing that?

4 A No.

5 Q Did she begin to do that at some point?

6 A No.

7 Q Okay.

8 Now you testified on cross-examination that you
9 did not think that you were a suspect?

10 A Yes.

11 Q When Sergeant Sovik and Detective Sederlund talked to
12 you in the conference room, Sergeant Sovik asked you
13 whether or not you had caused the injuries to Madison,
14 do you recall that?

15 A No.

16 Q Who were the only people with Madison on November
17 thirtieth (30th), two thousand and six (2006)?

18 A Throughout the day, Steve and myself.

19 Q Now I want to talk to you Mrs. McBurney about umm ---
20 your statement about seeing a tape recorder that
21 doesn't --- you don't know if it's recording?

22 A Yes.

23 Q Describe what you saw.

24 A Umm --- you want the size, the approximate size?

25 Q Whatever --- however a description you can give us.

1 A Umm --- a light brown, tan strap. Umm --- can I use
2 the Kleenex box again? I would say it was about
3 maybe that (indicating) big.. Maybe a little bit
4 wider. Umm ---

5 Q (Interposing) The size of your hand or what you're
6 showing underneath your hand on the box?

7 A Oh, I'm sorry. Up above here (indicating). Maybe a
8 little bit wider. Umm --- I don't know how else to
9 describe it.

10 Q And where did you see it?

11 A The first time I saw it was when Officer Sovik pulled
12 back his jacket at one time. And then I saw it umm -
13 --

14 Q (Interposing) And did you see that to his left or
15 his right?

16 A It was on his left.

17 Q Okay.

18 And where was it in relation to his body when you
19 saw it?

20 A Umm --- it was umm --- on his left side about ribs,
21 about waist level.

22 Q What color was it?

23 A Umm --- the strap was like a brownish tan color. And
24 it was ---kind of fit inside. I didn't inspect it
25 for a long time.

1 Q Okay.

2 Could you tell if he was carrying a gun in his
3 waist?

4 A No.

5 Q Could you tell if he was carrying a cell phone or a
6 pager on his waist?

7 A No.

8 Q Do you recall what type of jacket he was wearing?

9 A Yes.

10 Q What was it?

11 A It was a black leather jacket.

12 Q Okay.

13 And do you recall whether or not he was wearing a
14 pocket guard, a badge, on the outside of his pocket?

15 A No.

16 Q Okay.

17 Now you testified yesterday that at some point
18 when the officers had left the room that you saw it
19 sitting either on a chair or on the floor?

20 A Yes.

21 Q When did he take it off?

22 A Umm --- there was a period of time when I was not in
23 the room. I can't say when he took it off?

24 Q When did you first see it?

25 A Umm --- the first time I saw it is when I was in the

1 room with the officers.

2 Q So you didn't see him remove it?

3 A No.

4 Q Do you recall testifying at a hearing before Judge
5 O'Brien on September twenty-fifth (25th) of two
6 thousand and seven (2007)?

7 A Yes.

8 Q And you didn't say anything during that hearing about
9 hearing a button click, did you?

10 MR. WHITE: Your Honor, the question is
11 whether it was asked and whether she gave a prior
12 consistent statement. The form of that question is
13 improper. If it's not asked, it can't be a prior
14 inconsistent. She'd have to give direct response to
15 a question.

16 MS. POPE-STARNES: I'll ask it a different
17 way Judge.

18 THE COURT: Go ahead.

19 Q **(By Ms. Pope-Starnes, continuing)** Yesterday did you
20 testify that you heard a button click?

21 A Yes.

22 Q Okay.

23 During the hearing on September twenty-fifth
24 (25th) of two thousand seven (2007), you never
25 testified to that did you?

1 MR. WHITE: Your Honor, the question is
2 still improper because it has to be preceded was she
3 asked.

4 THE COURT: I gotcha.

5 MR. WHITE: So if that was asked and she
6 gave a contradictory response ---

7 THE COURT: (Interposing) I hear you. I
8 hear you.

9 Any response to that?

10 MS. POPE-STARNES: Yes, Your Honor. I
11 don't believe that that has to be the question. If
12 Counsel wants to follow up with that question he
13 certainly can. But I have a right to impeach the
14 witness in regards to their testimony.

15 THE COURT: Well in fairness Counsel, there
16 was the witness now and then can only respond to
17 questions that are asked. And if the question was
18 never asked then I would sustain the objection. And
19 I will if it hasn't been asked of her at that time.
20 She's not allowed to sit here and just give a
21 narrative. She can only respond to questions that
22 are asked of her and I don't know. I don't have the
23 transcript. I don't know if it was asked or not so.

24 Q (By Ms. Pope-Starnes, continuing) Did you describe
25 this device that you believe that you saw during the

1 hearing on September twenty-fifth (25th) of two
2 thousand and seven (2007)?

3 MR. WHITE: The form of the question is
4 still improper. It is whether she was asked a
5 previous question, Judge. You're absolutely right,
6 she ---

7 THE COURT: (Interposing) I'm not saying
8 that she wasn't asked but I sustain the objection at
9 this time until you can establish that the question
10 was asked or some derivative of it.

11 Q (By Ms. Pope-Starnes, continuing) Yesterday you
12 testified that you moved Sergeant Sovik's jacket to
13 look at the device, is that right?

14 A Yes.

15 Q Okay.

16 Do you recall testifying on September twenty-
17 fifth (25th) of two thousand and seven (2007), I'll
18 direct you to page one-sixty-seven (167) of the
19 transcript, Counsel, that you just saw it from the
20 position you were sitting in?

21 A Yes.

22 Q Yesterday you testified that you never said anything
23 about the device.

24 Do you recall testifying to that?

25 A I'm sorry. I don't understand what you're asking me.

1 Q Okay, I'll ask it differently.

2 Yesterday you were asked a question about whether
3 or not you said anything to anyone about seeing this
4 device and you said that you did not, do you recall
5 that?

6 A Umm --- about I don't remember exactly what ---

7 Q (Interposing) Did you testify yesterday about
8 whether or not you said anything to the officers or
9 your husband about this device?

10 A Umm --- I misunderstood the question I guess. I
11 thought what he was asking umm --- why I didn't ask
12 them about the recording device. I didn't --- I'm
13 sorry. I guess I just misunderstood. I thought ---
14 I didn't realize he was asking in general of
15 everybody.

16 Q Did you say anything to anyone about this recording
17 device that day at the hospital?

18 A I mentioned it to Steve when we were in the room
19 together alone.

20 Q You were asked on September twenty-fifth (25th) of two
21 thousand and seven (2007), 'When was it you became
22 aware as you testified that you believe that Sergeant
23 Sovik had something under his jacket,' do you recall
24 that?

25 A Yes.

1 Q And do you recall what your answer was?

2 A Yes.

3 Q What was your answer?

4 A Officer Sovik asked me a question. When I answered
5 it he had a pen in his hand. He put his hand, I'm
6 not sure exactly if he threw the pen down or put the
7 pen down, leaned back a little bit in his chair,
8 opened up his jacket and I believe that's as much as I
9 said and then that's when I saw the recording device.

10 Q There's nothing there about pushing a button is there?

11 MR. WHITE: Objection Your Honor. This is
12 the same question.

13 MS. POPE-STARNES: No. It's in response
14 to this answer Your Honor.

15 MR. WHITE: No it isn't. The form of the
16 question is improper.

17 THE COURT: It's a rhetorical question in
18 any event. The Court will sustain the objection.

19 Q **(By Ms. Pope-Starnes, continuing)** Now I need to
20 clarify with you Mrs. McBurney, yesterday Counsel
21 asked you several questions about whether or not your
22 husband said something. And each time you responded,
23 'Don't remember that.' 'No.'

24 A Yes.

25 Q He asked you, 'Whether or not your husband said he was

1 mad.'

2 Was your answer that you, 'Don't remember that,'
3 or 'No, he didn't say that'?

4 MR. WHITE: Well I guess this is asking the
5 witness to uh --- if she doesn't know, I guess she's
6 asking the witness to speculate. In that respect
7 Judge I think the form of the question is improper.

8 MS. POPE-STARNES: I'm not asking her ---

9 THE COURT: (Interposing) I don't buy
10 that it's speculation. It's overruled.

11 MS. POPE-STARNES: Thank you.

12 THE COURT: Go ahead.

13 THE WITNESS: Umm --- that no, I don't
14 remember.

15 Q (By Ms. Pope-Starnes, continuing) The answer is ---

16 A (Interposing) I don't remember.

17 Q (Continuing) that you don't remember?

18 A Correct.

19 Q Counsel asked you, 'If your husband said that Madison
20 had been screaming.'

21 Again, your answer was, 'Don't remember that,
22 no.'

23 Is it that, 'You do not remember' or 'No, he did
24 not say that'?

25 A I do not remember.

1 Q Counsel asked you, 'If your husband had said that
2 Madison was screaming in his ear'.

3 Again, your answer was, 'Don't remember, no.'

4 Is it that you don't remember that or that he did
5 not say that?

6 A I don't remember.

7 Q Okay.

8 He also asked you, 'If you recall your husband
9 saying something about being two feet away'.

10 And again, you had given the same response. Can
11 you tell us please was it that you don't remember or
12 he did not say that?

13 A I don't remember.

14 Q Okay.

15 Counsel asked you, 'If your husband had said
16 anything about Madison's head hitting part of the
17 crib.'

18 I have the same question Mrs. McBurney. Do you
19 remember if it was, 'That he did not say that' or 'You
20 don't recall'?

21 A I don't remember.

22 Q Okay.

23 Now I'm a little bit confused and I need your
24 help clarifying so I understand.

25 MR. WHITE: Objection Your Honor. That's

1 a narrative statement. She's not to be the test.
2 Just ask questions.

3 MS. POPE-STARNES: I'm trying to ask a
4 question Your Honor.

5 THE COURT: Go ahead. Go ahead.

6 MS. POPE-STARNES: May I proceed Your
7 Honor?

8 THE COURT: You may.

9 MS. POPE-STARNES: Thank you.

10 Q **(By Ms. Pope-Starnes, continuing)** You testified that
11 when you came back into the conference room at the
12 hospital ---

13 A (Interposing) Yes.

14 Q (Continuing) that, if I understand correctly, you
15 testified that you recall Sergeant Sovik speaking
16 first?

17 A Yes.

18 Q But you testified that you, 'Didn't remember what he
19 said.' Then you testified that you remembered your
20 husband saying that he, I believe it was that, 'He
21 threw Madison' and then you didn't remember anything
22 else'?

23 MR. WHITE: Objection.

24 MS. POPE-STARNES: May I finish the
25 question, Your Honor?

1 MR. WHITE: Objection. That's not her
2 testimony. That's mischaracteration ---
3 mischaracterization ---

4 MS. POPE-STARNES: (Interposing) May I
5 finish the question Your Honor?

6 MR. WHITE: (Continuing) of the
7 testimony.

8 THE COURT: One at a time. One at a time.
9 Okay?

10 Thank you. Thank you.

11 Go ahead. Finish the question.

12 MS. POPE-STARNES: If I'd been allowed to
13 finish the question I --- my --- what I was saying
14 was, is that what you testified to?

15 MR. WHITE: The form of the question is
16 improper.

17 THE COURT: The form --- sustained as to
18 form. Just rephrase, Ms. Pope-Starnes.

19 Q (By Ms. Pope-Starnes, continuing) Do you recall
20 Defense Counsel taking you through what happened in
21 the room when you came back in the room?

22 A Yes.

23 Q Okay.

24 What was the first thing that you remember?

25 A Umm --- Officer Sovik said something to me.

1 Q Do you remember what it was that he said?

2 A Yes.

3 Q Okay.

4 Did you testify yesterday that you didn't
5 remember what he said?

6 A No. I started to say what he was going to say and
7 you stopped me and said that it was hearsay evidence
8 so I wasn't supposed to say that.

9 Q Okay. All right.

10 What do you remember next?

11 A Umm --- I ---

12 THE COURT: (Interposing) I'm sorry for
13 interrupting but remember next meaning back at the ---

14 MS. POPE-STARNES: (Interposing) Yes.

15 THE COURT: (Continuing) at the hospital
16 or next, yesterday?

17 Q **(By Ms. Pope-Starnes, continuing)** Back at the
18 hospital.

19 A Umm --- the next thing was that what Steve said. Umm
20 --- is that --- that he threw her into the crib.

21 Q Do you recall your husband saying anything before
22 that?

23 A No.

24 Q Do you recall you saying anything to your husband
25 before that?

1 A I know there was a pause for a while. Then I said
2 something to the Detective, you know, just tell me.
3 But that's all I really remember.

4 Q And was that pause before or after Sergeant Sovik
5 first said something to you when you came in?

6 A After.

7 Q Mrs. McBurney, didn't --- wasn't the first thing your
8 husband said was asking you how ---

9 MR. WHITE: (Interposing) Objection as to
10 leading nature of the question Judge. She's ---
11 that's still her witness.

12 THE COURT: Rephrase it Ms. Pope-Starnes.

13 Q **(By Ms. Pope-Starnes, continuing)** Isn't it --- did
14 your husband say something else to you about Nicholas
15 Kennedy first?

16 MR. WHITE: Objection as to this Judge.
17 You've ruled on this issue.

18 MS. POPE-STARNES: That's just how Your
19 Honor.

20 THE COURT: Go ahead.

21 MR. WHITE: Well then I don't know if this
22 is something that we should take up right now Judge.

23 THE COURT: Come on up, please Counsel.

24 Bear with us folks. I'm sorry.

25 (Whereupon a discussion was held at the Bench out

1 of hearing of the Jury and the Court Reporter.)

2 * * *

3 THE COURT: Jeff, would you excuse the Jury
4 for just a couple of minutes?

5 THE CLERK: All rise for the Jury.

6 THE COURT: Please don't talk about the
7 case. Thanks.

8 (Whereupon the Jury was returned to the Jury room
9 at 9:55am).

10 * * *

11 THE COURT: Ma'am, if you want to have a
12 seat back there so you can go outside for a couple of
13 minutes go ahead, okay?

14 THE WITNESS: Okay.

15 THE COURT: You may all be seated.

16 The record will reflect that the Jury is excused
17 and I've permitted Mrs. McBurney to sneak outside for
18 a couple of minutes. There was a request that the
19 Court excuse the Jury for a couple of moments just so
20 we can get a foundation a little bit.

21 Ms. Pope-Starnes, you were beginning to question
22 the witness about the --- well you tell me. You were
23 starting in what regard?

24 MS. POPE-STARNES: Your Honor, the Court
25 heard the Walker hearing in this case. And as the

1 Court recalls the testimony from the Walker hearing,
2 there was an argument about what was said in the room,
3 when the police were in the room, with the victim's
4 mother and the Defendant. She's testified that
5 nothing else was said except the statement uh --- that
6 there's some statement by Sergeant Sovik. She's now
7 said that she asked the Defendant, 'What happened'.

8 And that the Defendant's response was that, 'He
9 threw the child into the crib.'

10 And she testified yesterday that's all that was
11 said. That's contrary to the testimony of the police
12 officers from the Walker hearing, from the preliminary
13 examination and what I'll be asking them to testify to
14 in the trial.

15 THE COURT: Go slow with me. How --- so
16 you're going to ---

17 MS. POPE-STARNES: (Interposing) Well let
18 me go a little further ---

19 THE COURT: (Interposing) Go ahead.

20 MS. POPE-STARNES: (Continuing) if I can?
21 Maybe that will clarify it for you.

22 THE COURT: Because I don't hear the
23 impeachment yes --- yet.

24 MS. POPE-STARNES: I'm getting there. So
25 now she's said, 'That's all that they said.'

1 The officers, if the Court recalls the Walker
2 hearing testimony, they testified that Sergeant Sovik
3 said something when they came in the room. That the
4 first thing said by the Defendant to her was, 'How do
5 you know about Nicholas Kennedy?'

6 And that she responded to him about that. Then
7 she asked him what happened. Then he says --- then
8 he goes on to talk about it and gives a description
9 after asking --- asked by the officers as to what
10 happened. So this is contrary to her testimony
11 yesterday where she says, 'Nothing else was said, then
12 got up and left the room.'

13 In order to impeach her under the Court rules I
14 have to ask her first to give her the opportunity to
15 respond before I can bring that out through the
16 officers.

17 THE COURT: And forgive me. The record
18 will speak for itself but maybe there's an agreement
19 that she testified just a minute ago that nothing else
20 was said or that I don't recollect or recall if
21 anything else was said.

22 MS. POPE-STARNES: Her testimony yesterday
23 was that, 'Nothing else was said.'

24 THE COURT: Any dispute as to that as to
25 yesterday so I don't have to take the time to listen

1 to the tape?

2 MR. WHITE: Judge. Uh --- I ---

3 THE COURT: (Interposing) Just on that
4 issue.

5 MR. WHITE: I can't remember whether she
6 said, 'I can't remember,' or 'I' --- you know, that's
7 all I can say.

8 THE COURT: Or nothing else?

9 MR. WHITE: I can't remember because
10 there's some, I think the only thing she could
11 identify being said was, 'I threw --- I threw her into
12 the crib.'

13 But all the rest seems to say that, 'I can't
14 remember.'

15 THE COURT: Okay.

16 Then there's --- okay. Thank you.

17 Go ahead, Ms. Pope-Starnes, assuming that she did
18 affirmatively state nothing else was said, go ahead
19 with your argument. Or does that cover it? Is that
20 your argument?

21 MS. POPE-STARNES: Well at some point I
22 reiterate all the details. If the Court recalls, the
23 officers testified about statements that were made and
24 after the Defendant made the statements that Sergeant
25 Sovik asked some questions and gathered more

1 information. Part of their argument is that these
2 officers are not telling the truth and that this never
3 happened. So I --- I have the right to impeach her
4 as to this. And I have to ask her these questions
5 first under the rules of evidence before I can bring
6 that out through the officers.

7 THE COURT: Let me make sure, I hate to
8 belabor the record, that I've got your argument.
9 Your argument is as follows.

10 She said at the Walker hearing, 'That the
11 Defendant' --- let's back up. At the Walker hearing
12 there was testimony from the witness about the scene
13 in the room with the Defendant, the officers and
14 herself. And in the Walker hearing while she was
15 testifying to that scene she testified to words that
16 the Defendant said concerning the Nicholas incident.

17 MS. POPE-STARNES: I'm not talking about
18 the Walker hearing.

19 THE COURT: No.

20 MS. POPE-STARNES: I'm talking about that
21 for this particular purpose I'm talking about her
22 testimony here in Court now.

23 THE COURT: Go slow with me.

24 But you're trying to impeach her with Walker
25 hearing testimony?

1 MS. POPE-STARNES: No. What I'm ---

2 THE COURT: (Interposing) Oh. Okay.

3 MS. POPE-STARNES: (Continuing) trying to
4 do is direct the Court's attention to help the Court
5 know the picture of what I'm saying. Because I'm ---

6 THE COURT: (Interposing) Okay. Just
7 break it down to specifically the impeachment.

8 MS. POPE-STARNES: All right. Let me try
9 it this way.

10 She testified yesterday that, 'She came in this
11 room. That Sergeant Sovik said something first.'

12 Today she said, 'She asked the Defendant to tell
13 me what happened and that he said that he threw
14 Madison in the crib.'

15 She testified yesterday, 'Nothing else was said.
16 That the police officers got up and left the room.'

17 We know from the preliminary examination and from
18 the police report and from the Walker hearing that the
19 officers have testified and will testify that what
20 happened was, is when she came in the room, Sergeant
21 Sovik spoke first. That the Defendant said to her,
22 'How did you know about Nicholas'. That she
23 responded to that. That then she asked him what ---
24 tell me what happened. And he said he threw Madison
25 in the crib. And then there was more conversation,

1 more statements by the Defendant and then some
2 questions by the officers. And then they left the
3 room.

4 THE COURT: Okay, but you've got to ---
5 maybe I'm just slow. You've got to go with me here.
6 You're trying to impeach her today with prior incon --
7 - statements, prior inconsistent statements by her
8 before?

9 MS. POPE-STARNES: No. In this trial
10 today and yesterday.

11 THE COURT: Right. But she --- so what is
12 it that she said yesterday that is inconsistent with
13 what she said today?

14 MS. POPE-STARNES: She said, 'That nothing
15 else was said in the room.' She has said that, 'The
16 first statement made by the Defendant was, How do you
17 know about Nicholas.' That has not been her
18 testimony today.

19 THE COURT: She said some prior time
20 Nicholas ---

21 MS. POPE-STARNES: (Interposing) No.
22 The officers will testify that that's what happened.

23 THE COURT: Okay.

24 But how is that impeaching her that someone else
25 said something different? Just go --- help me out.

1 How is it that if I say, 'The light was green,' and
2 someone else says, 'The light was red,' how does that
3 person's statement that, 'The light was red', impeach
4 my testimony that 'The light was green'?

5 It's not impeachment. It might be weight ---

6 MS. POPE-STARNES: (Interposing) The
7 Defendant is arguing that the officers are not being
8 truthful about this. And they're offering her
9 testimony that this was all that was said. Sergeant
10 Sovik said something. I said, 'What happened'. And
11 the Defendant made this statement only.

12 THE COURT: Okay.

13 Why do you need that ---

14 MS. POPE-STARNES: (Interposing) Because
15 under the rules of evidence ---

16 THE COURT: (Continuing) so you would
17 call these witnesses ---

18 MS. POPE-STARNES: (Continuing) I can't
19 get out through the officers that there were other
20 things said by her without asking her first.

21 THE COURT: Other things said by her,
22 correct. So she said on some prior occasion ---

23 MS. POPE-STARNES: (Interposing) The
24 officers will testify that when the Defendant said,
25 'How do you know about Nicholas', she responded. She

1 has denied that that happened. I can't get that
2 statement in unless she --- I confront her with it
3 first. And I have to get there with it.

4 THE COURT: Okay. All right. I think
5 I'm on track with you.

6 MS. POPE-STARNES: Okay.

7 THE COURT: Mr. White?

8 MR. WHITE: Okay.

9 First of all Your Honor, she's leading, she's
10 asking leading questions. The form of the question
11 is improper. Secondly, you've ruled on this
12 substantive evidence which is arguably very dangerous
13 evidence for you to allow it in any capacity, any
14 capacity, because the possibility this could taint
15 this trial.

16 THE COURT: Go ahead.

17 MR. WHITE: You've made a limited ruling,
18 okay, as to what is admissible regarding Nicholas
19 Kennedy. This witness, over and over again, as we
20 hear because of we can assume the trauma of not only
21 that night but of being here talking about her dead
22 daughter, can't remember, okay? The fact that she
23 can't remember is not necessarily impeachment. She
24 didn't emphatically say, 'Nothing else was said.'
25 You can see over and over again she says, 'I cannot

1 remember.' They're going in the backdoor to try to
2 get evidence in about a very, very dangerous subject
3 Judge.

4 THE COURT: Thank you.

5 MR. WHITE: So I don't believe it should be
6 permitted under these circumstances.

7 THE COURT: Thank you.

8 The Court, if the Court has --- that the Court
9 has ruled substantively does not preclude for further
10 introductions for impeachment purposes. There is not
11 a meeting of the minds as to whether or not she
12 testified yesterday quote, 'I don't remember', or
13 quote, 'Nothing else was said'. So we'll check that
14 out real quick and if it is indeed, 'Nothing else was
15 said', I respect your objection Mr. White but the
16 Court would overrule same and I don't find that my
17 ruling as to a substantive issue precludes inquiry
18 into --- for impeachment purposes. And the Court
19 finds that that would be proper impeachment assuming
20 she does that. Uh --- that she did say that. Go
21 off the record for a minute.

22 (Whereupon the record was stopped.)

23 * * *

24 THE COURT: I have --- I don't recollect
25 and I'm not going to rely just on my notes but Ms.

1 Pope-Starnes, you're saying she did yesterday say
2 that.

3 Mr. White, with all due respect and I certainly
4 respect you as an Officer of the Court, you didn't
5 say, 'She did not'. You just said you, 'Don't
6 remember.'

7 MR. WHITE: Well I'm just being candid.

8 THE COURT: I know.

9 MR. WHITE: I can't sit there and say ---

10 THE COURT: (Interposing) And like I
11 said, I respect you as an Officer of the Court.

12 Ms. Pope-Starnes, I'll uh --- I'll --- that's
13 your position?

14 MS. POPE-STARNES: Judge, the only other
15 way to do it more quickly is for me to ask her, 'If
16 anything else was said' and to see what her response
17 is.

18 THE COURT: Okay.

19 You know what? Fair enough.

20 MS. POPE-STARNES: Whatever way the Court
21 wants to handle it.

22 THE COURT: Okay. Maybe for expediency
23 purposes that would be a better way to go about it.
24 All right. Umm --- with that you'll bring her back
25 in.

1 And Jeff, you can bring back in the Jury.

2 THE CLERK: All rise for the Jury.

3 (Whereupon the Jury was returned to the courtroom.)

4 * * *

5 THE COURT: You folks are getting really
6 good at that. It's work, even flow.

7 You may all be seated.

8 The record will reflect that the Jury is back.

9 Thank you again, everyone.

10 And Ms. McBurney is back on the stand obviously.
11 Counsels' names have been noted for the record.

12 And Ms. McBurney, you are reminded you are still
13 under oath, required to testify truthfully and
14 honestly. Thank you.

15 Ms. Pope-Starnes.

16 MS. POPE-STARNES: May I proceed?

17 THE COURT: You may.

18 MS. POPE-STARNES: Thank you.

19 **WHEREUPON HEATHER MCBURNEY HAVING BEEN**
20 **PREVIOUSLY SWORN TO TELL THE TRUTH, THE WHOLE TRUTH**
21 **AND NOTHING BUT THE TRUTH WAS EXAMINED AS FOLLOWS:**

22 **CONTINUED REDIRECT EXAMINATION**

23 **BY MS. POPE-STARNES:**

24 **Q** Okay Mrs. McBurney, again, I'm going to direct your
25 attention back to when you came into the conference

1 room at the hospital and the police and the Defendant
2 were there.

3 What was the first thing that happened when you
4 came in the room?

5 A Umm --- I sat down and Officer Sovik spoke.

6 Q Then what happened?

7 A And then umm --- there was quiet. Umm --- Steve was
8 not saying anything. And then that's when I said to
9 him, 'Tell me' or something like that I said. Umm --
10 - and then that's when Steve said that, 'He threw her
11 into the crib'.

12 Q What happened then?

13 A All I can really remember next is Officer Sovik
14 speaking again before they left the room.

15 Q Did anyone else speak before they left the room
16 besides Officer Sovik?

17 A Not that I can remember.

18 Q Did you say anything else besides, 'What happened?

19 A Not that I can remember.

20 Q Can you recall saying ---

21 THE COURT: (Interposing) Do you have a
22 transcript or anything to see if it will refresh her
23 recollection? She says she doesn't recall anything.

24 MR. WHITE: My objection is to the form of
25 the question.

1 MS. POPE-STARNES: May I approach the
2 witness, Your Honor?

3 THE COURT: Respectfully as to the form,
4 the Court overrules the objection. And ---

5 MR. WHITE: (Interposing) And I thought
6 you made a ruling. I though you made a ruling and I
7 ask you to respect your ruling about what this ---
8 where this next step would be Judge.

9 THE COURT: Counsel, I understand and
10 that's why I have asked Counsel and invited Counsel
11 since she says, 'She cannot recall', she's certainly
12 entitled to show her something to see if it refreshes
13 her recollection.

14 Counsel, you may approach.

15 MS. POPE-STARNES: Thank you.

16 Q (By Ms. Pope-Starnes, continuing) I'm showing you
17 page five of fourteen (14) of the South Lyon Police
18 report. I'm going to direct your attention to the
19 last paragraph, the first three sentences. I'd ask
20 you to read that silently.

21 MR. WHITE: Your Honor, I'll object.

22 THE COURT: Just one second.

23 Ma'am, hold tight.

24 MR. WHITE: I'll object.

25 THE COURT: Let --- hold on a minute. Let

1 her finish the statement.

2 You asked her to what?

3 MS. POPE-STARNES: Read it silently to
4 herself and then hand it back to me when she's done.

5 THE COURT: Okay. Just a second Ma'am.

6 Mr. White?

7 MR. WHITE: The first question is, would
8 something refresh her recollection, the first
9 question. She hasn't stated that.

10 THE COURT: Okay. Go ahead.

11 MR. WHITE: Secondly, ---

12 THE COURT: (Interposing) Ask her the
13 question.

14 Q (By Ms. Pope-Starnes, continuing) Would something
15 refresh your recollection?

16 A Yes.

17 THE COURT: Second question. Second?

18 MR. WHITE: What would refresh her
19 recollection?

20 MS. POPE-STARNES: Your Honor, I don't have
21 to ask her that. The Court ruled that I ---

22 THE COURT: (Interposing) That's fine.

23 MS. POPE-STARNES: (Continuing) under the
24 statute, I don't have to show her anything.

25 THE COURT: I gotcha. Thank you Counsel.

1 Noted. Anything else?

2 The Court will permit this, permit her to show
3 her that.

4 MR. WHITE: Your Honor, I believe you're
5 violating your own ruling in the presence of the Jury.
6 Again, I respectfully ask, I ask that we not go here.
7 Because all you're --- what you're doing is allowing
8 them to go through the back door which they can't go
9 through the front door.

10 THE COURT: That --- you've made that
11 comment noted and I've respected and will overrule it.

12 Go ahead.

13 Q **(By Ms. Pope-Starnes, continuing)** Please read that
14 silently to yourself, the last paragraph, the first, I
15 believe, four sentences. And then hand it back to me
16 after you've had the opportunity to do that.

17 Have you had the opportunity to read that?

18 A Yes.

19 Q Now does that refresh your recollection as to whether
20 or not you said anything else in the conference room?

21 A Oh. I really don't remember.

22 Q You testified on cross-examination that after the
23 officers left the room, that you and your husband had
24 a conversation?

25 A Yes.

1 Q What did you talk about?

2 A Umm --- uh --- we talked about his son.

3 MR. WHITE: Objection Your Honor.

4 Objection.

5 THE COURT: Is that ---

6 MR. WHITE: (Interposing) It's not being
7 offered for impeachment. It's being offered in
8 violation of this Court's order regarding admission of
9 evidence.

10 THE COURT: Anything further on this than
11 this line?

12 MS. POPE-STARNES: First of all, Your
13 Honor, I've moved on from that. I've moved onto
14 something else. I believe I've done what I can for
15 impeachment on that issue. My next line of
16 questioning has been, she was asked by the Defense on
17 cross-examination, about did she have a further
18 conversation with her husband when the police left the
19 room. I'm asking what that conversation was. There
20 are no officers present so this is not a statement for
21 law enforcement. And I believe that her statement
22 that she just said has nothing to do with any
23 violation of the Court's order or section ---

24 THE COURT: (Interposing) Come on up for
25 a second please? Come on.

1 (Whereupon a discussion was held at the Bench out of
2 hearing of the Jury and the Court Reporter.)

3 * * *

4 THE COURT: The Court will construe the
5 objection as a motion to strike, Since the answer
6 was already received, and the Court will respectfully
7 deny that motion to strike and you may proceed Ms.
8 Pope-Starnes.

9 MS. POPE-STARNES: Thank you.

10 Q (By Ms. Pope-Starnes, continuing) What else did your
11 husband say while the two of you were alone in the
12 conference room?

13 A Umm --- He told me what his name was.

14 Q What whose name was?

15 A His son's.

16 Q What was his name?

17 A Nicholas Chase Kennedy.

18 Q What, if anything else, did you talk about?

19 A Umm --- can I have just a minute to try to ---

20 Q (Interposing) Of course you can.

21 THE COURT: The question is, what, if
22 anything else.

23 Q (By Ms. Pope-Starnes, continuing) Do you have some
24 water?

25 A Yes.

1 Umm --- I'm drawing a blank right now.

2 Q Okay.

3 I just have a few more questions for you.

4 You umm --- talked about Madison's health that
5 day.

6 MR. WHITE: Objection. Objection. That
7 is not a question Judge. That's improper. I asked
8 it be stricken.

9 THE COURT: Sustained. Sustained as to
10 form. Sustained.

11 MS. POPE-STARNES: May I proceed Your
12 Honor?

13 THE COURT: You may.

14 MS. POPE-STARNES: Thank you.

15 Q **(By Ms. Pope-Starnes, continuing)** You talked
16 yesterday, you testified about Madison's health on
17 November thirtieth (30th) of two thousand and six
18 (2006). Do you remember that?

19 A Yes.

20 Q Okay.

21 And do you remember when was Thanksgiving in
22 relationship to November thirtieth (30th) of two
23 thousand and six (2006)?

24 A It would have been, I believe it was not that
25 Thursday, but the Thursday before.

1 Q Were you with family?

2 A Umm --- I know that we were with his family on one
3 weekend. And I believe we did not get to go out to
4 my parents' house until it had to have been that
5 Friday.

6 Q The Friday before?

7 A It was the Friday after.

8 Q Okay.

9 The Friday after Thanksgiving?

10 A Yes.

11 Q Was it the Friday before November thirtieth (30th)?

12 A Yes.

13 Q Okay.

14 You testified yesterday that you never saw
15 bruises, scrapes or swelling on Madison?

16 A Yes.

17 Q She never had any bruises or scrapes or swelling?

18 A No. Not even a diaper rash. No.

19 Q As of November thirtieth (30th) of two thousand and
20 six (2006), how many hours a day would the Defendant
21 be alone with your daughter?

22 A Umm --- alone? Umm --- from when I left at six-
23 thirty p.m. (6:30pm) till I returned home in the
24 morning about four a.m. (4:00am).

25 MS. POPE-STARNES: May I have just one

1 moment, Your Honor?

2 THE COURT: You may.

3 (Whereupon a brief delay was had.)

4 * * *

5 MS. POPE-STARNES: Thank you.

6 THE COURT: Mr. White?

7 MR. WHITE: Just a couple other questions,
8 okay?

9 **RECROSS-EXAMINATION**

10 **BY MR. WHITE:**

11 Q Now you now you said Heather that Madison had been
12 tired before and clinging days before November
13 thirtieth (30th)?

14 A Yes.

15 Q Okay.

16 Had she ever had a day like November thirtieth
17 (30th) before with the vomiting, the projectile
18 vomiting, the tired, clingy, unusual nap, the
19 headache? Anything like that ---

20 MS. POPE-STARNES: (Interposing)
21 Objection. That's a mischaracterization. She said
22 it was speculation on her part as to whether or not
23 the child had a headache.

24 THE COURT: Sustained as to that.
25 Rephrase.

1 MR. WHITE: Well Judge, ---

2 THE COURT: (Interposing) Rephrase. Go
3 ahead.

4 MR. WHITE: (Continuing) how would she
5 know.

6 Q (By Mr. White, continuing) Your perception of a
7 headache. Did she ever have a day like that before?

8 A The headache, my assumption of her having a headache
9 was new. The vomiting was new. Umm ---

10 Q (Interposing) Okay.

11 What about all those things ---

12 A (Continuing) the early morning nap was ---

13 Q (Interposing) All those things ---

14 MS. POPE-STARNES: (Interposing)
15 Objection. I'm asking that she be allowed to finish
16 her answer.

17 THE COURT: One at a time. Yep. Go
18 ahead.

19 THE WITNESS: The early morning nap was
20 new. She did have occasions of being tired and
21 clingy on other days, yes.

22 Q (By Mr. White, continuing) So all those other things
23 that you talked about were the first time that you had
24 ever seen them and experienced those things as a
25 mother?

1 A Yes.

2 MR. WHITE: Nothing further.

3 THE COURT: Anything further?

4 MS. POPE-STARNES: No.

5 THE COURT: Thank you Ma'am. You're all
6 set.

7 MS. POPE-STARNES: May this witness be
8 excused?

9 THE COURT: Sure.

10 MR. WHITE: Yes. Thank you.

11 MS. POPE-STARNES: Your Honor, the People
12 would call Doctor Cormac Maher to the stand.

13 THE COURT: Thank you.

14 THE CLERK: **Do you swear that the testimony**
15 **you are about to give will be the truth so help you**
16 **God?**

17 THE WITNESS: **Yes.**

18 THE COURT: Thanks. You can have a seat
19 there.

20 You may proceed, Ms. Pope-Starnes.

21 MS. POPE-STARNES: Thank you Your Honor.

22 **D O C T O R C O R M A C M A H E R**

23 **WAS THEREUPON CALLED AS A WITNESS HEREIN, AND AFTER**
24 **HAVING BEEN FIRST DULY SWORN TO TELL THE TRUTH, THE**
25 **WHOLE TRUTH, AND NOTHING BUT THE TRUTH WAS EXAMINED**

1 **AND TESTIFIED AS FOLLOWS:**

2 **DIRECT EXAMINATION**

3 **BY MS. POPE-STARNES:**

4 **Q** Sir, would you please state your name and spell your
5 last name for the record.

6 **A** Cormac Maher. M A H E R.

7 **Q** Sir, I'm going to ask you to please keep your voice up
8 so that the last Jurors seated in the Jury box can
9 hear you.

10 Can you do that?

11 **A** Yes.

12 **Q** Thank you.

13 Are you employed Sir?

14 **A** Yes.

15 **Q** How are you employed?

16 **A** I'm a pediatric neurosurgeon.

17 **Q** Where did you attend medical school?

18 **A** Georgetown University.

19 **Q** And when did you graduate from medical school?

20 **A** Nineteen ninety-eight (1998).

21 **Q** Did you complete a residency program?

22 **A** Yes.

23 **Q** And where did you complete a residency program?

24 **A** The Mayo Clinic.

25 **Q** And did you have an area of uh --- particular medicine

1 that you focused on in your residency?

2 A Neurosurgery.

3 Q Was it just neurosurgery in general or pediatric
4 neurosurgery at that point?

5 A Both.

6 Q What is a fellowship, Doctor?

7 A A fellowship in neurosurgery is additional training
8 that you pursue after completing your residency.
9 Your residency is the basic requirement to be a
10 neurosurgeon, a practicing neurosurgeon. Most
11 neurosurgeons stop training at that point. A
12 fellowship is important if you want to specialize in
13 one area of neurosurgery such as pediatric
14 neurosurgery, vascular neurosurgery. So I pursued
15 two fellowships following my residency training.

16 Q What was the first fellowship that you pursued
17 following your residency training?

18 A The first fellowship I pursued was in pediatric
19 neurosurgery.

20 Q And specifically that means the area of neurosurgery
21 involving children?

22 A That's correct.

23 Q And where did you pursue that fellowship?

24 A Harvard Medical School. Boston Children's Hospital.

25 Q And did you complete that program?

1 A Yes.

2 Q And what was the next fellowship that you pursued?

3 A It was in vascular neurosurgery, bleeding disorders of
4 the brain involving surgical treatment.

5 Q And where did you complete that?

6 A Harvard Medical School, the Brigham and Women's
7 Hospital.

8 Q I'm sorry, what?

9 A Harvard Medical School, Brigham and Women's Hospital.

10 Q Brigham and Women's Hospital?

11 A That's correct.

12 Q And when did you complete those fellowships?

13 A The pediatric fellowship I completed in June of two
14 thousand and five (2005). And the cerebrovascular
15 fellowship I completed in June of two thousand and six
16 (2006).

17 Q Do you hold a medical license?

18 A Yes.

19 Q And how long have you held a medical license?

20 A Umm --- the first medical license I received was
21 during residency training and that would have been in
22 Minnesota in, I want to say, nineteen ninety-nine
23 (1999), but it could have been nineteen ninety-eight
24 (1998). I'm not certain. It's one or the other.
25 Umm --- and uh --- when I moved to Boston I

1 transferred my medical license to Massachusetts. And
2 I've been licensed in Massachusetts from two thousand
3 and four (2004) until that may have recently lapsed
4 because I moved to Michigan in two thousand and six
5 (2006). And I've been licensed in Michigan since umm
6 --- approximately March of two thousand and six
7 (2006).

8 Q Since you have moved to Michigan what has your
9 practice consisted of?

10 A Pediatric neurosurgery.

11 Q And where?

12 A The University of Michigan Hospital.

13 Q Can you tell the Jury please what hospitals you've
14 been affiliated with?

15 A Medical school was Georgetown University Hospital and
16 then the Mayo Clinic in Rochester, Minnesota. Then
17 Boston Children's Hospital, the Brigham and Women's
18 Hospital, University of Michigan Hospitals.

19 Q In your present --- well what is your present position
20 at University of Michigan Hospital?

21 A I'm an assistant professor of neurosurgery.

22 Q And so what duties does that entail?

23 A The majority of my time is spent treating patients
24 with neurosurgical problems. I treat virtually
25 entirely children in my practice. Occasionally on

1 call I'll treat an adult patient but almost always
2 it's infants and children. Across the spectrum of
3 neurological disorders, because of my training, my
4 specialty is vascular and bleeding disorders in
5 children but I'll also treat brain tumors in children,
6 other kinds of trauma in children, bleeding in
7 children, hydrocephalus in children. Occasionally
8 spine disorders but mostly the brain.

9 Q And are you also then as part of that position, you
10 also do teaching?

11 A That's correct. We train residents in neurosurgery
12 at the university. We take two residents a year.
13 It's a seven year program and we train them to perform
14 neurosurgical operations and treat patients with
15 neurosurgical diseases.

16 Q Approximately how many children do you treat a year?

17 A In terms of surgical treatments it's about two hundred
18 and fifty (250) a year. In terms of surgical and
19 non-surgical treatments, patients that we see and
20 evaluate and decide to not pursue surgery, it would
21 probably be, I would have to estimate that it would
22 probably be about ten times that number.

23 Q And approximately how many of the children that you
24 treat a year or see a year, do their issues involve
25 vascular neurological issues?

1 A Uh --- again, we don't, at least I don't keep exact
2 track of these numbers, so I'd have to give you an
3 estimation. But I would say if you include all cases
4 where there's bleeding in the head, uh --- that we
5 evaluate, I would give you an estimation of sixty (60)
6 or seventy (70). But again, that's just an
7 estimation because I don't keep track of those numbers
8 exactly.

9 MS. POPE-STARNES: Your Honor, I would ask
10 that this witness be qualified as an expert in
11 pediatric neurosurgery.

12 THE COURT: Any objection?

13 MR. WHITE: Just if I may Voir Dire?

14 THE COURT: You may. You may.

15 **VOIR DIRE**

16 **BY MR WHITE:**

17 Q All right Doctor, my name is Robert White I
18 represent Mr. McBurney. Have you ever testified in
19 Court before?

20 A No.

21 Q Okay.

22 Ever been qualified as an expert witness in Court
23 before then?

24 A I've never been asked to testify before.

25 Q Okay.

1 Did you review any documents before you came to
2 testify today?

3 A Yes. I reviewed the medical record.

4 Q The medical record of?

5 A Of Madison McBurney.

6 Q Okay.

7 And that medical record consists of what?

8 A Uh --- it consisted of my own operative notes, my own
9 progress notes in the hospital uh --- and various
10 notes from the other consultants that were involved in
11 her care.

12 Q Did you review the complete medical record?

13 A I reviewed it depends on what you mean by complete.
14 The medical record is very extensive and it includes a
15 lot of details. And I cannot tell you that I know
16 every single detail in the medical record that
17 wouldn't be truthful. But I did spend a long time
18 reviewing the medical record and taking all of the
19 points that I felt were important.

20 Q Okay.

21 MR. WHITE: I have no objection to this
22 particular doctor testifying as an expert at this
23 time.

24 THE COURT: Thank you. So noted.

25 Ms. Pope-Starnes, you may proceed.

1 MS. POPE-STARNES: Thank you Your Honor.

2 **DIRECT EXAMINATION CONTINUED**

3 **BY MS. POPE-STARNES:**

4 **Q** Now Doctor Maher, I'd like to start out by asking you
5 if you could please explain to the Jury the basic
6 structures of the brain?

7 **A** It's hard to know where to begin. The brain
8 obviously is an organ in the head. It has several
9 coverings on top of it. It has a pia layer which is
10 a very thin layer which sits right on top of the brain
11 and is fixed to the brain itself. It has a slightly
12 thicker covering called the arachnoid layer which sits
13 on top of the pia layer and forms a space between that
14 pia and arachnoid layer, that's called the sub-
15 arachnoid layer or sub-arachnoid space. And then on
16 top of the arachnoid there's dura covering which is a
17 very thick tough membrane on top of the brain. And
18 the space underneath the dura is called the subdural
19 there. The space on top of the dura is called the
20 epidural space. And then on top of all of that you
21 have the skull.

22 Within the brain itself obviously the anatomy is
23 complex and has ---

24 **Q** (Interposing) Well let me ask you this.

25 **A** (Continuing) thousands of structures, so I'm not

1 really sure where to begin with that.

2 Q Okay.

3 Are there more --- is there more than one lobe to
4 the brain?

5 A Absolutely.

6 Q Can you explain the different lobes of the brain to
7 the Jury?

8 A Sure.

9 Q And where their locations are?

10 A There are different lobes to the brain. The frontal
11 lobes, we have two hemispheres. The brain is split
12 in half down the middle, okay? And in each half we
13 have frontal lobes here (indicating), left frontal
14 lobe, right frontal lobe. We have parietal lobes
15 back here (indicating), left parietal lobe, right
16 parietal lobe. There are occipital lobes, left
17 occipital lobe, right occipital lobe and then there
18 are temporal lobes, left temporal lobe, right temporal
19 lobe, okay?

20 All of those lobes are in what's called the
21 supratentorial compartment because they're in the top
22 half of the brain. They're over the tentorium
23 cerebelli. And beneath the tentorium we have a
24 different part of the brain called the cerebellum
25 which is in the back of the head, back here

1 (indicating).

2 In addition to those lobes in the cerebellum we
3 have a brain stem which sits in front of the
4 cerebellum underneath all of the of the other lobes
5 that I described. And the brain stem controls
6 breathing, swallowing, a lot of the very basic
7 functions that allow us to live. That's --- that's
8 right in the center of the brain. It's very
9 difficult to point to because it's really no more
10 accurate to point to this side (indicating) or this
11 side (indicating). It's right in the center.

12 There are, again, many other structures besides
13 the basic lobes, besides the brain stem, besides the
14 cerebellum but that's an overall picture of the brain.

15 Q Are you familiar with a term bridging veins?

16 A Yes.

17 Q Can you explain what bridging veins are please?

18 A The venous drainage of the brain, again, it's
19 relatively complex. And some of the blood that
20 enters the brain will leave through veins that are
21 deep inside the brain. And some of the blood that
22 enters the brain will leave the brain through what's
23 called bridging veins. And bridging veins are veins
24 that go from the brain's surface through that subdural
25 space and into the dura membrane that we talked about.

1 So they're called bridging veins because they bridge
2 that space, okay? They are not a --- usually not an
3 extremely important source of egress or outflow of
4 blood from the brain but they are --- everything in
5 the brain is somewhat important so... But that's
6 what a bridging vein is. It's just one type of
7 venous drainage from the brain and it's in that
8 subdural space.

9 Q And are they actually connected to the brain?

10 A Yes.

11 Q And then I believe you said that they --- are they
12 actually connected then to the ---

13 A (Interposing) To the venous structures within the
14 dura matter. The dura which is that tough membrane
15 that we talked about is actually in two sheets. And
16 the sheets can be split apart in some areas and the
17 venous blood can run in-between those two sheets. So
18 a bridging vein connects the cortical veins on the
19 brain's surface through that subdural space and into
20 the dura matter veins. And then the blood can
21 continue to flow through that and then out.

22 Q When --- can you tell us what the phrase subdural
23 hematoma or hemorrhage means?

24 A Mm-hmm. A hematoma or hemorrhage is a blood
25 collection somewhere. A subdural hematoma qualifies

1 that and tells us where it is. It's in the subdural
2 space which is that space that's on top of the brain
3 and underneath the dura.

4 Q Now Doctor Maher, if I can direct your attention back
5 to um --- on or about November thirtieth (30th) or
6 December first, of two thousand and six (2006), umm --
7 - did you treat a patient by the name of Madison
8 McBurney?

9 A Yes.

10 Q Can you tell the Jury please about your first contact
11 with Madison?

12 A My first contact with Madison was the morning after
13 her admission to the hospital. She had been
14 previously seen and evaluated by a number of my
15 colleagues in the emergency department and the ICU as
16 well as the on-call person on the neurosurgery team.
17 I saw her in the morning and evaluated her imaging
18 studies. Looked at her exam. Called together the
19 treating physicians.

20 Q Now when you talk about imaging studies what are you
21 talking about?

22 A She had pictures of her brain that were taken. A CT
23 scan as well as I --- I should check the medical
24 records and check the timing of this, but I think the
25 MRI scan had been done just immediately prior to that

1 as well.

2 Q Okay.

3 At some point did you have an opportunity to
4 review an MRI scan?

5 A Absolutely.

6 Q Can you tell us what a CT scan is?

7 A A CT scan is a kind of way of looking at the brain.
8 It's based on radiation principles just like x-rays
9 except it gives us very good images of the brain
10 because it gives us slices of the brain. So we could
11 start here (indicating) and take a slice as if we were
12 taking a slice like this (indicating) and then a slice
13 like this (indicating) and then a slice like this
14 (indicating) and we can stack those slices and we can
15 actually see what's going on inside the brain. It is
16 fairly accurate at showing us acute blood or new blood
17 in the head. It can show us a number of other things
18 as well. It can show us if there are any signs of
19 pressure sometimes. Sometimes it can show us if
20 there are any strokes. It's relatively quick to get
21 a CT scan and that's why it's always, I shouldn't say
22 always, usually the first study that will be obtained
23 and in the case of a critically injured child uh ---
24 in some ways, not in absolutely everyway, but in some
25 ways it's not as accurate as an MRI scan. An MRI

1 scan takes longer to obtain. It requires a lot of
2 effort on the part of the anesthesiologist to monitor
3 a child who's taking a while inside an MRI scanner.
4 So for that reason the MRI scanner is usually not the
5 first test we get. But in some ways the MRI scanner
6 which is relatively newer technology does provide us
7 with a little bit more accurate information.

8 Q What does --- what is an MRI scanner?

9 A An MRI scanner is --- doesn't use radiation instead it
10 uses magnetic principles where we, again I shouldn't
11 speak as a --- as a person who's an expert on physics
12 and an MRI scanner. But basically you --- you put a
13 magnetic field through the water cells in the body and
14 you polarize them and then you let them relax. And
15 by studying how all the cells relax you can get a
16 little bit of a picture, actually a very good picture,
17 of what's going on in the brain or any other body
18 tissue that you happen to be imaging. So the
19 pictures in general are clearer than on a CT scan.
20 You can see more fine detail on an MRI scan than a CT
21 scan. Again, it takes a little bit longer to obtain.

22 Q Now uh --- after you had the opportunity to umm ---
23 examine Madison and review these records from the
24 radiology reports as well as the other physicians,
25 what was going on with Madison at that point?

1 A Mm-hmm. On that morning Madison was in the intensive
2 care unit at the Children's Hospital. And she was
3 quite ill. She had been given Phenobarbital which is
4 a sedating medicine that can be given to stop any
5 seizures that were thought to be going on. She had
6 been given Ativan which is also a sedating medicine.
7 We were breathing for her with a ventilator, I
8 believe, on that morning. I shouldn't say we. The
9 ICU team was in charge of that but they had her on a
10 ventilator and were breathing for her. So she was --
11 - she was quite ill for sure.

12 Umm --- in terms of her neurological examination
13 that morning, I could check the record to tell you
14 exactly what I noticed word for word. But in general
15 I can tell you that she looked neurologically ill.
16 That her level of consciousness was impaired. That
17 when we stimulated her arms and her legs with what we
18 call deep stimulation but essentially it's a little
19 bit of pain applied to the fingernails and the
20 toenails to see what the response will be, that she
21 had an impaired response to that. There was some
22 thought that morning that she was a little bit better
23 than she had been several hours previously. And we
24 were initially hopeful um --- that she was going to
25 show some signs of improvement. As you may know

1 already that ultimately wasn't the case. But that
2 was our initial thought that morning.

3 Q And what treatment umm --- did you do at that point?

4 A Mm-hmm. At that point the treatment was controlling
5 all of her ventilatory measures, making sure that she
6 was getting enough oxygen, making sure we were
7 breathing correctly for her. Her head had been
8 elevated to decrease any potential pressure problems
9 that she may have. I should say, did you ask me what
10 the CT showed and what the MRI showed?

11 Q Not yet.

12 A Okay.

13 We'll get to that. But I should say that based
14 on that CT scan the intracranial pressure didn't seem
15 to be quite elevated so we weren't as ---

16 Q (Interposing) Let me stop you there.

17 MR. WHITE: I'm sorry. He turned his head
18 away Judge.

19 Doctor what did you just say?

20 THE WITNESS: I said, based on the initial
21 CT scan, there were no signs of obviously elevated
22 intracranial pressure.

23 Q **(By Ms. Pope-Starnes, continuing)** When you talk
24 about intracranial pressure, can you please explain
25 that?

1 A Yeah. The --- the brain is in a compartment that we
2 described with the various membranes on top of it and
3 the skull on top of it. And that's the intracranial
4 compartment. It's uh --- when you --- if you want to
5 get very simplistic about it, you can think of it as a
6 box. It's a closed box. And if you increase the
7 volume of something inside that closed box that will
8 increase the pressure inside the box. And so when we
9 talk about intracranial pressure we're simply talking
10 about how much pressure is inside the skull. How
11 much pressure is inside the cranium. That's a very
12 important consideration when you're dealing with a
13 child with any sort of a brain issue because the
14 intracranial pressure uh --- when it's elevated can
15 cause all sorts of problems. So we are very aware of
16 elevated intracranial pressure and try to prevent that
17 when we can.

18 Q What was the results of the first CAT scan and MRI of
19 Madison?

20 A Mm-hmm. The first CAT --- now this child had had
21 previous CAT scans. But the first CAT scan from this
22 hospital admission that we're speaking about ---

23 Q (Interposing) Yes.

24 A (Continuing) demonstrated blood in the head under
25 the dura. So the subdural space that we talked

1 about, significantly there appeared to be two
2 different ages for this blood, okay? Based on how
3 bright the blood is on the CAT scan we can tell if it
4 is brand new or if it is older. And if some of it is
5 one intensity, one brightness and some of it is
6 another brightness, we can tell that this didn't
7 happen at the same time. This happened at different
8 times. The blood that was in the back of the head
9 along the tentorium that we talked about on the left
10 side was bright. The blood that was in the front
11 part of the head along the frontal lobe on the left
12 side was darker indicating that it did not occur at
13 the same time, that there were different aged bleeding
14 episodes, okay? Different compartments or different
15 or over different lobes of the brain. And it ---

16 Q (Interposing) Now I just want to ask a question here
17 Doctor.

18 So are these two different places in the brain?

19 A Mm-hmm. It depends on what you mean by different.
20 They're on the same side of the head but they're over
21 different lobes. The older blood was mostly over the
22 frontal lobe although if we look at the pictures we
23 can see that it can go back a little bit but mostly
24 over the frontal lobe. The new blood was in the back
25 and the left side. I'm showing you the right

1 (indicating) just because I'm facing the right here
2 but it's in the back and the left side over that
3 tentorium underneath the occipital lobe. So I would
4 say that's different, yes, but it also depends on your
5 definition of the word.

6 Q What was your diagnosis at that point after you'd had
7 an opportunity to conduct an examination to review the
8 initial CAT scan and the MRI from Madison's November
9 thirtieth (30th) admission and review the medical
10 record?

11 A Okay. On the basis of this admission and this CAT
12 scan our diagnosis was subdural hematomas, an old
13 subdural hematoma and a new subdural hematoma.

14 Q Now you testified that Madison seemed a little better
15 that morning.

16 Can you tell the Jury what happened next during
17 the course of her admission?

18 A Yeah. Well the --- the ICU team continued to
19 evaluate Madison. She had uh --- various theories at
20 the time for what was going on with her as there
21 usually is when an ill child gets admitted to the
22 hospital. So they pursued an MRI scan which we
23 haven't talked about yet but we will talk about.
24 They also asked an ophthalmologist to come and dilate
25 the pupils so they could look into the back of the eye

1 and to gather more information that way. They also
2 asked various other team members such as uh ---
3 neurologists to come by and evaluate her as well as
4 the ICU team.

5 Q Doctor can you tell the Jury what is a differential
6 diagnosis?

7 A For subdural hematomas?

8 Q No, in general.

9 A Yeah. Differential diagnosis here is trauma, non-
10 accidental meaning intentional trauma versus
11 accidental trauma. At least initially you think
12 about things like spontaneous bleeding. Could this
13 blood just have got there by itself because of some
14 abnormality with this child because of a bleeding
15 disorder say or some arterious venous malformation or
16 what we call dural arterial venous fistulas that can
17 sometimes bleed into the space. That's --- that's
18 all part of a broad differential diagnosis meaning an
19 all encompassing differential diagnosis. As you
20 learn more about a child and learn more about the big
21 picture, the overall picture of the child, and what
22 other doctors are seeing in their examinations you can
23 start to narrow that differential diagnosis.

24 Q Okay.

25 And do the --- the testing and the consultations

1 from the other specialties help narrow the
2 differential diagnosis?

3 A Yes.

4 Q And --- and what is --- is the purpose of a
5 differential diagnosis to find out what's wrong with
6 the patient?

7 A No. The purpose of a differential diagnosis is to be
8 sure that you're not missing something. You want to
9 consider all the possibilities. You want to think
10 about everything that it could possibly be. You
11 might have a list of ten things or twenty (20) things.
12 It doesn't mean that it is each of those ten things or
13 twenty (20) things. You just, at least, want to
14 consider it. Could it be this? Could it be this?
15 What is the evidence that would suggest that it is
16 this or isn't this? And we talked about these
17 things. We go over these things with the other
18 consulting physicians and eventually narrow the
19 differential diagnosis as we learn more about the
20 child as we continue to examine the child, as we get
21 more testing and as other physicians are able to
22 examine the child and add their expertise based on
23 what their training is.

24 Q What was the next contact that you personally had with
25 Madison?

1 A Uh --- the next contact that I had with Madison I
2 believe was going up to the intensive care unit a few
3 hours later to discuss her case with the ICU team and
4 with the ophthalmology team. They had dilated one of
5 Madison's pupils and taken a very good look inside one
6 of her eyes and saw what we call papilledema.

7 Q What is papilledema?

8 A Papilledema is swelling of the optic disc which is
9 something we can see when we look into the back of the
10 eye not apparent on the surface. It's on the retina.
11 So looking in the back of the eye like when you go to
12 an eye doctor for glasses or something, sometimes have
13 that test done. Papilledema is swelling of the optic
14 disc and the reason it's important for us is because
15 we use that as a marker for elevated pressure inside
16 the head. When the pressure is elevated inside the
17 head that pressure is transmitted down the optic
18 nerve, the eye nerve, which ends in the back of the
19 eye. And when that nerve swells, when that disc
20 swells which is the end of the nerve, that implies
21 pressure inside the head. So I was notified that
22 that was the finding and uh --- immediately went up to
23 talk to the ICU team, the other physicians, as well as
24 Madison's family about the next step. The neurology
25 team was involved at this point as well.

1 Q And then what happened?

2 A And uh --- had recommended an intracranial pressure
3 monitoring device.

4 Q Okay.

5 Can you explain to the Jury please what an
6 intracranial pressure monitoring device is?

7 A Yes. There are various ways we have of learning what
8 the pressure is inside the head. I've given you one
9 indirect way where we can look in the back of the
10 eyes. But there are some more direct ways where we
11 can actually put a monitor inside the head and that
12 will give us a number. It will tell us how high the
13 pressure is inside the head. One of those ways is
14 just by putting an electrode inside the brain and that
15 reads like any electrode, a pressure monitor. It
16 tells you the pressure is ten or twenty (20) or thirty
17 (30) millimeters of mercury. Another way to do it
18 and the way we chose to pursue this in Madison's case
19 is by putting in what's called an external ventricular
20 drain, sometimes called a ventriculostomy. And
21 that's a tube that you can place through the skull and
22 through the brain into the fluid-filled spaces inside
23 the head. Everybody has ventricles or fluid-filled
24 spaces in the central part of their brain.

25 When somebody has elevated pressure one useful

1 thing to do is put a ventriculostomy or a tube into
2 that fluid-filled space. Because, number one, it
3 tells you how high the pressure is inside the brain,
4 we can transduce the pressure just like transducing
5 any other pressure.

6 Q What does transduce mean for those of us that are not
7 medical people?

8 A It --- connecting into a pressure-monitoring device
9 that will tell us this fluid column inside this head
10 is ten millimeters of mercury or twenty (20)
11 millimeters of mercury or different pressures inside
12 the head. So it has the advantage, number one, we
13 can --- we can learn the pressure just like with the
14 other device. But number two, we can actually
15 relieve some of that pressure theoretically by
16 draining fluid out. In addition to that, the uh ---
17 neurology team had been eager to get some spinal fluid
18 from Madison. We talked about a differential
19 diagnosis and they wanted to make sure we were looking
20 into every possibility so we wanted to send spinal
21 fluid for analysis as well. And the ventriculostomy
22 could allow us to do that because obviously it drains
23 spinal fluid from inside the head to outside the head.
24 So it's a pressure-monitoring device. It can be a
25 pressure-treatment device because we're draining fluid

1 out of that closed box. And it can be sometimes a
2 diagnostic device because we can get fluid so...

3 Q Did you conduct a procedure to give Madison this type
4 of device?

5 A Yes. After discussing this procedure with Madison's
6 family we decided to go forward and put this tube into
7 the middle of her brain. And she was brought down to
8 the operating room and we did put the ventriculostomy
9 tube in her brain.

10 Q Do you recall what date it was that you did that?

11 A That was the day after she came in. I think that was
12 December first. I could check the record.

13 Q And were you successful in that procedure?

14 A Yes.

15 Q Okay.

16 After you put that device in were you able to
17 find out what her pressures were at that time in her
18 brain?

19 A Yes. Her pressures were very elevated.

20 Q Do you recall approximately what they were?

21 A I can tell you that approximately they were fifty (50)
22 or sixty (60).

23 Q What is normal in a child Madison's age?

24 A We consider less than twenty (20) acceptable. That
25 doesn't mean it's normal. Normal would be ten or

1 less. When we have a ventriculostomy and often we're
2 measuring in centimeters of water, we have a fluid
3 column of water and it just goes up ten, twenty (20),
4 thirty (30), forty (40), fifty (50) centimeters.
5 Madison's was very high. I consider anything over
6 twenty (20) elevated. I consider anything much
7 higher than that very elevated. She was in the very
8 elevated range right from the start. So we drained
9 fluid from her head aggressively to try to treat that
10 pressure as well as ---

11 Q (Interposing) Was she treated with medications as
12 well?

13 A She was. She was treated, number one, she had
14 sedation on board which treats intracranial pressure.
15 When you're calm and relaxed it lowers your
16 intracranial pressure. She also was treated with
17 something called hypertonic saline, a three percent
18 (3%) saline which has the effect of lowering your
19 intracranial pressure. And she was given quite a lot
20 of that as well. In addition to that, we were
21 hyperventilating or over-breathing on the breathing
22 tube through a ---

23 Q (Interposing) Why is that?

24 A It's a --- I'm trying to think of a way of explaining
25 it. If you hyperventilate a patient or over-breathe,

1 if you breathe more rapidly for them than they would
2 ordinarily breathe, there's a relatively complex
3 feedback loop in the body. When you bring --- over-
4 breathing brings down the carbon dioxide level which
5 essentially clamps down on some arteries and brings
6 down the pressure inside the brain. So it's a
7 relatively standard way in somebody who has a
8 critically elevated intracranial pressure of lowering
9 the intracranial pressure. It works very well in the
10 short term. And it's something we can't rely on over
11 many, many days. But when somebody's in big trouble
12 like Madison was, it's something that we use.

13 Q Now Doctor Maher, can you tell the Jury when you see a
14 child with the elevated intracranial pressures such as
15 Madison had, what are your concerns about what's going
16 on in her head at that time?

17 A Mm-hmm. The --- the trouble with having elevated
18 intracranial pressure is that it compresses the brain
19 very seriously. And also we worry about something
20 called a cerebral perfusion pressure which is the
21 ability of blood to get into the brain. The arterial
22 pressure is --- is only so high and it can't push
23 against very high pressure inside the head. So
24 that's why we try to lower the intracranial pressure
25 so that there's still a head of pressure with blood

1 going up to the head.

2 Q Were you concerned about brain damage?

3 A Absolutely. Yeah.

4 Q The course of treatments that you began after you had
5 the monitor in place, were those successful?

6 A No. She had what we called refractory intracranial
7 pressure meaning that despite all of our maximum
8 medical measures, everything we could think of short
9 of something else we'll probably talk about, uh --- we
10 were not successful in lowering her intracranial
11 pressure. Pressure stayed elevated despite our
12 measures.

13 Q What is a, I believe, it's craniectomy? What is
14 that?

15 A A craniectomy is removing a patient's skull. We
16 talked about how the cranium is a closed box and the
17 pressure inside the closed box can --- can be
18 elevated. And ways you can treat that by trying to
19 bring things out of the box like bringing the fluid
20 out of the box with the ventriculostomy. When those
21 measures are not successful occasionally we consider
22 something else which is called a craniectomy, which is
23 removing the skull. Or if you want to use the box
24 analogy it's opening the lid off the box so that
25 whatever's inside it can expand out. It is a --- I

1 think that it's fair to say that it's somewhat
2 controversial in its use in America although it is
3 used from time to time. And certainly we do it from
4 time to time in the right situation. I think it's
5 important in the situation like Madison's where our
6 backs are against the wall and we can't think of
7 anything we can do to help a child to at least
8 consider that operation although it seems radical to
9 remove someone's skull and let the brain expand out.

10 Q Was that considered in Madison's case?

11 A It was considered. And I spoke with Madison's mother
12 about that operation. And we had a very long
13 discussion about the various pros and cons of trying
14 something that radical in Madison's case. And uh ---
15 after that very long discussion, Madison's caregivers
16 felt that that wasn't in her best interest. And I
17 thought that that was a good choice on their part.

18 Q Doctor Maher, based on your experience even in cases
19 where you do a craniectomy, the brain damage that has
20 already occurred to a child, is that permanent?

21 A Yes, it can be. And that's the trouble with
22 craniectomies. And that's what we talked about with
23 Madison's caregivers that day. The --- the
24 significant problem with hemicraniectomies is that we
25 know that it increases the risk of what's called a

1 permanent vegetative state. Of somebody with an
2 absolutely awful and unrecoverable neurological injury
3 and we somehow manage to --- to make them survive but
4 in an --- in a state that they can't do anything.
5 They have no brain function or no significant brain
6 function that would lead to any quality of life.
7 This is a very difficult decision for families to face
8 when posed with the suggestion that they could simply
9 not have a very significant chance of helping their
10 loved one but instead be increasing their risk of
11 doing something like that. For that reason my
12 personal opinion, surgeons differ a little bit, but
13 everybody's a little bit cautious with recommending
14 that kind of an operation just because the outcomes
15 can be so poor. In Madison's case, especially with
16 the pressures being as high as they were, indicating
17 an injury as bad as hers was, I certainly thought that
18 this was an appropriate decision on the family's part.
19 I ---

20 Q (Interposing) Did Madison continue to decline in her
21 health at that point?

22 A Yes. I could refer to the record and tell you
23 exactly what the timeframe was. She hung on for a
24 couple of days but she did have a continuous
25 neurological decline over the next couple of days.

1 Q Was there any further treatment that you could give
2 her?

3 A There was medical treatment that we discussed but
4 there was no further treatment other than what we've
5 discussed what the ICU team was instituting.

6 THE COURT: Hold that thought right there.
7 Umm --- do you have a bit more? And I don't want to
8 rush.

9 MS. POPE-STARNES: Yes, I do.

10 THE COURT: Okay. Well then there's ---
11 we've been going for awhile. So we'll take a short
12 recess.

13 All right, Doctor. Thank you.

14 Please everyone don't talk about the case.
15 Thank you.

16 THE CLERK: All rise for the Jury.

17 (Whereupon the Jury was returned to the Jury room
18 at 11:00am).

19 * * *

20 THE COURT: Doctor, if you want a thing of
21 water, if you want to bring it up here.

22 THE WITNESS: That would be great. I'd
23 appreciate it.

24 THE COURT: Okay, fine. We'll get you
25 one.

1 Thank you. The record will reflect that the
2 Jury's been excused and you may all be seated. We'll
3 take a break for ten, fifteen (15) minutes.

4 Doctor, you're all set.

5 Jeff, could you get the Doctor some water when we
6 come back?

7 THE CLERK: Yes Judge.

8 (Whereupon a break was had.)

9 * * *

10 THE CLERK: The Court calls People
11 versus McBurney, case number 07 214651 FC.

12 THE COURT: Mr. White, Ms. Pope-Starnes,
13 your appearances are noted in the record and it is
14 back up. Doctor is back on the witness stand.

15 Doctor when the Jury comes in, I'm just going to
16 remind you, you are still under oath and required to
17 testify truthfully and honestly.

18 You can bring the Jury back in.

19 Sorry about the delay everybody. I got involved
20 in some issues upstairs.

21 A VOICE: We have a little disturbance up
22 on the fourth floor Your Honor.

23 THE COURT: What's that?

24 A VOICE: A little disturbance. A little
25 pushing and shoving.

1 THE COURT: Got that taken care of?

2 A VOICE: Yes Your Honor.

3 THE COURT REPORTER: We heard it was the
4 second floor.

5 THE COURT: Somebody fell down to the
6 second floor.

7 THE COURT REPORTER: Oh.

8 THE COURT: After the Defense Counsel had
9 taken care of them.

10 THE CLERK: All rise for the Jury.

11 (Whereupon the Jury was returned to the courtroom
12 at 11:35am.)

13 * * *

14 THE COURT: You may all be seated.

15 The record will reflect that the Jury is back.
16 The case has been called. Counsels' names have been
17 noted. And the Doctor is back on the witness stand.

18 And Doctor, you are reminded that you are still
19 under oath, required to testify truthfully and
20 honestly. Thank you.

21 Ms. Pope-Starnes, whenever you're ready.

22 **WHEREUPON DOCTOR CORMAC MAHER HAVING BEEN**
23 **PREVIOUSLY SWORN TO TELL THE TRUTH, THE WHOLE TRUTH**
24 **AND NOTHING BUT THE TRUTH WAS EXAMINED AS FOLLOWS:**

25 **CONTINUED DIRECT EXAMINATION**

1 BY MS. POPE-STARNES:

2 Q Now Doctor Maher, I believe when we walked off, I
3 wanted to ask you about the MRI.

4 Umm --- how many different MRI's were done on
5 Madison during her November thirtieth (30th) admission
6 to University of Michigan Hospital?

7 A One.

8 Q Okay.

9 And did you have an opportunity to review the
10 MRI?

11 A Yes.

12 Q Can you talk about the findings in the MRI?

13 A There were multiple findings. The uh --- with
14 respect to the blood that we've already spoken about,
15 the MRI also demonstrated blood just like the CT scan
16 did.

17 Q I'm very sorry Doctor Maher. I can't hear you.

18 A Sorry. With respect to the blood on the brain in the
19 subdural space that we saw in the CT scan, the MRI
20 scan also demonstrated that blood. Specifically it
21 showed blood in the subdural space on the left side in
22 the frontal area, kind of right up here (indicating),
23 as well as in the supratentorial area, back here
24 (indicating). Just like on the CT scan, the MRI scan
25 suggested that the blood was of at least two different

1 ages and that the blood in the frontal area looked
2 older than older than the blood in the posterior area
3 on top of the tentorium. The blood on top of the
4 tentorium looked much newer.

5 In addition to that there were some other
6 findings in the temporal lobe that we've talked about
7 which ends right about here (indicating). At the
8 very front part of the temporal lobe there was a
9 little bit of brightness especially on a special kind
10 of MRI scan that was done called a diffusion scan.
11 That brightness suggested to us an injury either
12 within the very, very front of the temporal lobe
13 itself, the brain itself, ---

14 MR. WHITE: (Interposing) Excuse me.
15 Excuse me Doctor. I just ask the doctor to speak for
16 himself. And I know that what he's doing. I just
17 ask rather than use the word us or we.

18 THE WITNESS: Sure.

19 THE COURT: Okay. Thank you. Noted.

20 Go ahead.

21 **Q (By Ms. Pope-Starnes, continuing)** I'm sorry Doctor.
22 I believe you were saying there was some brightness on
23 the diffusion scan?

24 **A**Right.

25 **Q**And what does that mean to you?

1 A It --- it implies that there's blood in a certain part
2 of the brain. It was at the very, very front part of
3 the brain and the front part of the temporal lobe of
4 the brain, the left side. And that could have been
5 subarachnoid blood or it could have been what we call
6 a contusion right at the very front part of the
7 temporal lobe. A contusion is blood within the brain
8 itself. It didn't look particularly subdural to me
9 although it was next to the subdural space. It
10 didn't look like it was in the subdural space.
11 That's what I thought and ---

12 Q (Interposing) Well let me ---

13 A (Continuing) that's ---

14 Q (Interposing) Well let me ask you about that.

15 So you said it could have been a contusion or
16 subarachnoid?

17 A Right.

18 Q Subarachnoid meaning below the arachnoid?

19 A Exactly, which is a different compartment underneath
20 the subdural compartment and just on top of the brain.

21 Q Okay.

22 And what do you mean by contusion?

23 A A contusion is blood within the brain itself. A
24 large amount of blood within the brain itself we
25 usually don't call a contusion we call that a

1 intraparenchymal hemorrhage or intracerebral
2 hemorrhage. When they're little spots sometimes
3 we'll call those spots contusions, sort of a bruise on
4 the brain. Uh --- and we saw that on the, again, on
5 the temporal tip of that MRI scan.

6 In addition, to that there was a sign of ---
7 signs of very diffuse brain injury on the MRI itself,
8 especially on the, what we call the T2 weighted scans,
9 which show us edema or the brain's all sucking up
10 water when they're injured. Then it showed us some
11 signs of that and lots of --- not lots, several
12 different things could cause that. Lack of oxygen
13 can cause the brain to swell. Injury can cause the
14 brain to swell, like a trauma. And the T2 weighted
15 scan showed that not just in the area where the
16 bleeding was but really scattered quite diffusely
17 throughout the brain there was --- there was some T2
18 changes within the brain substance itself, again not
19 in the subdural space but within the brain substance
20 itself. Those are the relevant findings on the MRI
21 that I can recall right now.

22 Q Now the injuries that you observed to Madison through
23 your examination, through the review of the CAT scan
24 and the MRI, umm --- specifically the subdural
25 hematomas that you saw, can you talk to the Jury about

1 what are the possible causes of subdural hematomas?

2 A There are multiple causes of subdural hematomas, some
3 more likely than others. There is a traumatic
4 subdural hematoma. Somebody who has been injured
5 either as an accident or as an intentional injury can
6 have bleeding in the subdural space causing a subdural
7 hematoma. You can have blood vessel malformations
8 such as dural arteriovenous fistulas which can cause
9 subdural hematomas, usually in the area near where
10 that fistula would be. And arteriovenous
11 malformation can rarely do it although not very
12 commonly. Occasionally in children with very, very
13 large, what we call extra-axial spaces, or a very,
14 very large space between the brain and the skull
15 itself, you can get bleeding in that space. You've
16 heard the phrase, 'Nature abhors a vacuum.' And
17 there's a space there (indicating), and sometimes a
18 relatively minor injury can fill a space with blood,
19 In children who have that condition of the enlarged
20 extra-axial spaces or sometimes a similar condition
21 you'll hear described as benign external
22 hydrocephalus, which is an enlarged space on top of
23 the brain. That's a cause as well. Children can
24 have bleeding disorders. They can have a narrative
25 bleeding disorders or bleeding disorders that only

1 they have and not inherited from their family that can
2 cause an easy bleeding not just in the head but
3 throughout their body. Easy bruising throughout
4 their body. Nose bleeds and also bleeding in the
5 head of which one manifestation might be subdural
6 hematomas. So there are certainly multiple causes of
7 subdural hematomas. Like in ---

8 Q (Interposing) Was there blood work done on Madison?

9 A (Continuing) some rarer than others.

10 Blood work done? Yes, there was. I ---

11 Q (Interposing) Were you able to rule out whether or
12 not she had any of those bleeding disorders that would
13 cause a subdural hematoma?

14 A Based on the blood work we did, we didn't see any
15 evidence for bleeding disorders.

16 Q You talked about uh --- it could be caused by blood
17 vessel malformation.

18 Did you see any evidence of that?

19 A No. On any of the imaging that she had either before
20 or during this episode, we did not see any blood
21 vessel malformations to account for that.

22 Q You talked about umm --- children that have large,
23 extra-axial spaces.

24 Did you see any evidence of that?

25 A No. And she had had a previous MRI scan that did not

1 show that.

2 Q Okay.

3 You had an opportunity to review a previous MRI
4 scan?

5 A Yes.

6 Q When was that done?

7 A It had been performed, I think about two months
8 earlier. It was August, I want to say, the end of
9 August.

10 Q Of two thousand and six (2006)?

11 A Of the same year of two thousand and six (2006).

12 Q And do you know where that was done?

13 A That was done at the University of Michigan.

14 Q And were you able to review that?

15 A Yes. When she came to the hospital with this injury
16 I reviewed it retrospectively.

17 Q So you from both that and the MRI done when she was
18 admitted, from her November thirtieth (30th)
19 admission, did you see any evidence of the large
20 extra-action --- extra-axial space?

21 A No.

22 Q Were you given any information that she was involved
23 in an accidental traumatic event?

24 A At the time that she first presented to us?

25 Q Yes.

1 A No.

2 Q When you talk about accidental traumatic events, would
3 that include things like a motor vehicle accident?

4 A Yes.

5 Q Now Doctor Maher, can you talk to the Jury please um -
6 -- from your finding of the August of two thousand and
7 six (2006) MRI? What, if anything you observed in
8 that?

9 A The August two thousand and six (2006) MRI did show
10 one area in the left parietal lobe and that's a
11 different area than we've been talking about so far
12 located around here (indicating) where there was high
13 intensity umm --- a little spot of high intensity on
14 that lobe within the brain itself. Not in the
15 subdural space but within the brain itself. And the
16 differential diagnosis at that time was blood, a spot
17 of blood within the brain itself or perhaps something
18 else. Something more unusual like a lipoma which is
19 a kind of fat tumor. The radiologist that
20 interpreted that at the time recommended getting more
21 pictures down the road in order to clarify that.
22 With the idea that a spot of blood within the brain if
23 you leave it long enough will often go away. You can
24 see that it goes away and think that it was blood.

25 Q Was there any follow-up testing done?

1 A When she --- there was a CT scan which no trace of
2 blood in that area was seen. And then ---

3 Q (Interposing) When was --- I'm sorry to interrupt.

4 When was that CT scan done?

5 A I think September but I would have to check exactly.

6 Q Okay.

7 Of what year?

8 A Of two thousand and six (2006).

9 Q And do you know where that was done?

10 A At the University of Michigan.

11 Q And did you have the opportunity to review the results
12 of that CT scan?

13 A Yes. When Madison came to the hospital with this
14 injury we went back and looked at all of her old
15 scans.

16 Q And did you personally go back and look at them?

17 A Yes.

18 Q Okay.

19 And umm --- what, if anything, did you find from
20 the September of two thousand and six (2006) CT scan?

21 A There was no evidence of blood in that location.

22 Q Was there any evidence that it was lipoma or fat tumor
23 as you had talked about?

24 A No. It just wasn't seen on that CT scan. In
25 addition there was no subdural blood at that time in

1 September.

2 Q Now was there before her admission to the hospital on
3 November thirtieth (30th), was there a subsequent MRI
4 done at the University of Michigan Hospital?

5 A I'm only aware of two MRI scans. The first one
6 showing the spot that we talked about. And the next
7 one being during her hospitalization after the injury
8 which is ---

9 Q (Interposing) And the umm --- your review of the MRI
10 that was done after her admission on November
11 thirtieth (30th), the blood or lipoma or fat tumor
12 that was observed in the August, two thousand and six
13 (2006) MRI in the left parietal lobe ---

14 A (Interposing) Correct.

15 Q (Continuing) was that still there?

16 A It was not.

17 Q Now Doctor Maher when you talk about umm --- the old
18 and new subdural hematomas that you observed from the
19 MRI and the CAT scans after her admission on the
20 November thirtieth (30th), umm --- are you able ---
21 are you able to actually tell the Jury ages of these?

22 A We can accurately say that there are two different
23 ages. We can less accurately predict exact ages.
24 Based on the fact that it was bright on the CAT scan
25 when she first came in, the blood in the back it was

1 bright on the CAT scan, and because of its
2 characteristics on the MRI scan we predict that it
3 wasn't more than a few days old at the most. It
4 could have been a day or two. It could have been
5 more than that. The blood in the front we know is
6 much older because it was low density on the CAT scan
7 and had different characteristics on the MRI scan.
8 Predicting the exact age of that is difficult at least
9 for me. And I think difficult for anybody with any
10 degree of certainty. But we can say quite surely
11 that it was definitely, significantly older. More
12 than just a few days older.

13 Q Now Doctor Maher there's been a question raised as to
14 whether or not um --- the symptoms that Madison
15 displayed on November thirtieth (30th) of two thousand
16 and six (2006), were not from a new subdural hematoma
17 but from a rebleed of a chronic or old subdural
18 hematoma. Do you have an opinion about that?

19 A I think that's not likely for a couple of reasons.
20 Number one, the new and the old blood were in
21 different parts of the brain. The old blood was in
22 the front. Most of the new bleeding was in the back.
23 And usually when you have rebleeding into an old
24 hematoma it's rebleeding into the old hematoma, into
25 the same site or very close site. In addition to

1 that the symptoms in Madison's case far outstripped
2 any kind of uh --- usual course of a hematoma that
3 size. The hematoma that we saw on the CT scan was
4 sizeable but it's the kind of thing that by itself,
5 when it's just a subdural hematoma, often doesn't
6 require surgery and often doesn't lead to devastating
7 neurological problems. We can watch it over time and
8 watch it go away on its own.

9 The intracranial pressure, I've told you before,
10 didn't look elevated on that first CAT scan. It was
11 not impressive on the CAT scan which isn't a great way
12 of looking at intracranial pressure, that's true but
13 it tells us some things. We can see, for instance,
14 how much the blood is displacing the brain. If it's
15 pushing on the brain a whole lot or just a little bit.
16 And it was pushing on the brain a little bit. The
17 kind of thing that by itself, the blood by itself,
18 you'd expect a child to be able to survive.

19 What I'm getting at is that the severity of her
20 injuries far outstripped the subdural hematomas.
21 Making us immediately concerned that there was
22 something far beyond what we were seeing on the CAT
23 scan that was going on with her, a more extensive
24 injury that wasn't apparent on the CAT scan. A more
25 extensive injury to her brain itself. You don't see

1 that when somebody has a simple episode of a small
2 rebleed into a preexisting subdural hematoma. That
3 doesn't happen. If somebody has a small amount of
4 blood that rebleeds into a preexisting subdural
5 hematoma, they can get sick. Sure, they can get sick
6 but they --- they tend to not present in an extremist
7 or as sick as Madison was. In other words, at
8 death's door. So I don't --- I can't remember the
9 question. I think ---

10 Q I think you answered it.

11 A Yeah.

12 Q Doctor after you and the other physicians went through
13 the differential diagnosis and were able to rule out
14 other causes, were you able to come up with a final
15 diagnosis?

16 A The final diagnosis was really reached with a team of
17 physicians which I was just a part. And it takes
18 into account a number of factors, the brain scans, the
19 CT scan, the MRI scan, the findings of the
20 tremendously elevated intracranial pressure, the eye
21 findings, the findings of the people that had talked
22 to various family members. In the end, we made a
23 diagnosis ---

24 MR. WHITE: (Interposing) I'd just ask
25 that you speak for himself --- that he speak for

1 himself.

2 THE COURT: Yeah. You might be using we
3 as a common vernacular but if it's your diagnosis than
4 if you'd just say yours.

5 THE WITNESS: Well ---

6 THE COURT: (Interposing) Recognizing
7 that other people might share it.

8 THE WITNESS: Sure. I was using we as I
9 thought sort of a medical team.

10 THE COURT: Right.

11 THE WITNESS: Together we came up with the
12 diagnosis. I was one small part of that. But in
13 the end, we thought she died of ---

14 MR. WHITE: (Interposing) Your Honor, I
15 just asked that he speak for himself.

16 THE WITNESS: Okay.

17 MR. WHITE: I'm sorry, Doctor. I know
18 that's not the way you do it normally but for purpose
19 of this.

20 THE WITNESS: Yeah. In the end, I thought
21 that Madison died of a severe intracranial injury.
22 Again that, that something had happened to Madison
23 that far outstripped what would cause a subdural
24 hematoma of that size. And what that was, I left up
25 to other physicians to sort out based on based on

1 other information that they had that goes beyond my
2 area of neurosurgery. And uh --- they spoke to me
3 about that and I was certainly involved with those
4 decisions. But from my standpoint I could say that -
5 -- that she had a severe injury that goes beyond a
6 subdural hematoma and goes beyond even a small
7 subdural hematoma bleeding into itself. And with
8 another subdural hematoma she had a very extensive,
9 very terrible injury.

10 MS. POPE-STARNES: May I have just one
11 minute please, Your Honor?

12 THE COURT: Yes.

13 (Whereupon a brief delay was had.)

14 * * *

15 MS. POPE-STARNES: Thank you.

16 I have no other questions.

17 THE COURT: Thank you.

18 Mr. White.

19 **CROSS-EXAMINATION**

20 **BY MR. WHITE:**

21 **Q** Doctor, you're a professor at the University?

22 **A** That's correct.

23 **Q** Okay.

24 So I'm going to ask you to be an educator knowing
25 that none of us have the --- the uh --- grasp of the

1 terms that you do. And acute, subacute and chronic.
2 Could you define those three sets of terms?

3 A Mm-hmm. They can be defined slightly differently by
4 different people but everybody agrees in generalities
5 that acute means new. For me, that means within a
6 day or two. Some people might push it to three days.
7 Subacute to me means starting in that two or three day
8 range. Chronic means long-term. Something that's
9 been there for a week, two weeks, three weeks,
10 especially a month. That's very chronic. Uh --- so
11 again, it's uh --- it's frankly as far as I'm
12 concerned terms that have a little bit of gray area
13 between them. There's a gray area between acute and
14 subacute and there's a gray area between subacute and
15 chronic. But in general acute means new, subacute is
16 less new, a few days old and chronic is older than
17 that. We're talking usually in the order of weeks.

18 Q Hypoxic? Hypoxia?

19 A A lack of oxygen.

20 Q Okay.

21 Ischemic. I S C H E M I C.

22 A Cell death that results usually from a loss of oxygen.

23 Q Edema?

24 A Swelling of the cells. Especially the --- you can
25 have swelling of the brain in general. But usually

1 it means that on a cellular level the cells are
2 sucking in water and expanding.

3 Q Hypoxic ischemic injuries?

4 A Cell death from lack of oxygen.

5 Q Diffuse axonal injury?

6 A Diffuse axonal injury is a result of trauma. The
7 nerve cells, the little cell bodies, and then axons
8 that they send out from their cell bodies is like the
9 wiring of the nervous system. And these things are -
10 -- are very long and very fragile. And after an
11 injury or an accident the axons can be sheared or
12 broken like the broken cables and that causes what we
13 call DAI or diffuse axonal injury. It's a ---

14 Q (Interposing) The shearing concept is with the DAI
15 the diffuse axonal injury, correct?

16 A That's the usual mechanism for diffuse axonal injury.

17 Q As opposed to the hypoxic ischemic injury, correct?

18 A Uh --- correct, although some injuries can cause both.

19 Q Umm --- the difference between a hematoma and a
20 hemorrhage?

21 A They're used interchangeably. A hematoma tends to be
22 a collection of blood. We think of it as like a ball
23 of blood sometimes but it doesn't have to be. It can
24 be a collection of blood anywhere. You can have a
25 hemorrhage that is a hematoma but a hemorrhage can

1 also be in other spaces such as the subarachnoid space
2 where it tends to be more diffuse and spread out.
3 And we usually don't refer to those as hematomas
4 because they're not big collections of blood
5 somewhere.

6 Q The term focal effacement? It says in here, 'Mild
7 focal effacement'.

8 A Mm-hmm. It depends on the context but I think that
9 goes back to what we were talking about with the ---
10 the amount of pressure on the brain as judged from the
11 CT scan. Sometimes we'll say, 'There's significant
12 effacement' if we think it's pushing on the brain a
13 lot or not so much effacement, mild effacement if it's
14 not pushing on the brain very much. It can be used
15 in many different contexts but usually that's what it
16 means.

17 Q The term infarction, intracranial infarction?

18 A Mm-hmm. That's the result of ischemia. That's an
19 area of the brain that has undergone a stroke or dying
20 because of lack of oxygen.

21 Q Now the term intracranial. Intracranial.

22 Is that --- could you explain what the expansive
23 definition of that is?

24 A Inside the head.

25 Q Inside the head.

1 Calvarium?

2 A The skull.

3 Q The skull.

4 So the bony part of the skull?

5 A Correct.

6 Q And uh --- I believe you touched on it, pappadea
7 (sic).

8 A Papilledema?

9 Q Papilledema. Excuse me.

10 A Mm-hmm. Papilledema is swelling of the optic disc at
11 the end of the optic nerve. It implies elevated
12 intracranial pressure.

13 Q When the term chronicity is used? It's a variation
14 of chronic.

15 A It means degree --- degree of oldness. It could be a
16 --- it could be very chronic and the degree of
17 chronicity is great or it could be not very chronic or
18 acute in which case there's not a great degree of
19 chronicity.

20 Q Umm --- you reviewed in your context of your ---

21 THE COURT: (Interposing) I'm sorry for
22 interrupting but what I was thinking is if you have
23 more terminology let's get that done and then we'll
24 break for lunch. Or does that pretty much cover it?

25 MR. WHITE: That pretty much covers it

1 Judge.

2 THE COURT: All right. Obviously we're
3 not going to be done with the doctor before the lunch
4 hour since it's twelve o'clock (12:00) now.

5 So we will break for lunch at this time Ladies
6 and Gentlemen. Appreciate your patience. Not that
7 --- not that we have ever been waiting on you. I
8 know it's been the other way around. But what I
9 would kind of suggest and invite you to do, if you
10 come back a little bit before one-thirty (1:30), that
11 way once we have all of you here then perhaps we can
12 make the delay a little bit less. But we'll just
13 wait to be seen. By all --- by no means am I
14 suggesting you guys are tardy because it's the other
15 way around. I'm certainly aware of that.

16 Please don't discuss the case and have a nice
17 lunch, okay?

18 THE CLERK: All rise for the Jury.
19 (Whereupon the Jury was returned to the Jury room.)

20 * * *

21 (Whereupon a lunch recess was had.)

22 * * *

23 THE CLERK: The Court calls People versus
24 McBurney, case number 07 214651 FC.

25 THE COURT: Ms. Pope-Starnes?

1 MS. POPE-STARNES: Sarah Pope-Starnes,
2 assistant prosecuting attorney.

3 THE COURT: Thank you.

4 MR. WHITE: Robert White, appearing on
5 behalf of Mr. McBurney.

6 THE COURT: Thanks.

7 What's going on?

8 MS. POPE-STARNES: As I mentioned
9 yesterday, the issue that the only records they sent
10 me were the admission from November thirtieth (30th)
11 on from U of M.

12 THE COURT: Mm-hmm.

13 MS. POPE-STARNES: The investigator came
14 this morning and brought me the records and indicated
15 there's a letter that's addressed to you that I
16 glanced at and it says, 'Only you can open this.'

17 THE COURT: It's probably got anthrax in it
18 or something.

19 MS. POPE-STARNES: While I believe it's
20 perhaps because it was a subpoena signed by the party
21 and not by the Court. So apparently they don't know
22 the Michigan Court Rules. And um --- and they're
23 worried about HIPAA violations so they want only the
24 Court opening this. I told Counsel that I'm
25 concerned. It sure did not feel like there's a disc

1 in here of the radiology records that we asked. And
2 during my lunch hour I had the investigator calling
3 them to find out where's the disc. So umm ---

4 THE COURT: I'll take it.

5 MR. WHITE: I --- well I'll open the
6 package first.

7 MS. POPE-STARNES: We'd like to know what
8 dates the records are that are in there.

9 MR. WHITE: Of course. Of course.
10 How appropriate is it if there's something extra
11 in there?

12 THE COURT: That's exactly why I gave it to
13 him.

14 MR. WHITE: I'm going to stand back here.

15 THE COURT: So you opened this thing?

16 MS. POPE-STARNES: Yeah. That one was
17 opened and we were told --- the investigator was told
18 that you had to read that first and that only you
19 could open the sealed one. And it's supposed to be
20 from a lawyer from the University of Michigan Health
21 System.

22 THE COURT: So I can save Ms. Reznick the
23 trouble and maybe if you want to make it part of the
24 appellate record rather than read it all into the
25 record, Counsel want to just take a look at it? I

1 don't think it's much of an issue but see what it
2 says.

3 MS. POPE-STARNES: I already read it.

4 THE COURT: Oh. You already read the one
5 that was ---

6 MS. POPE-STARNES: (Interposing) Not the
7 one that was --- that was sealed?

8 THE COURT: This is the one that was in the
9 sealed one.

10 MS. POPE-STARNES: Oh no, then I haven't.
11 It's the same.

12 THE COURT: Is it the same thing?

13 MS. POPE-STARNES: Yes.

14 THE COURT: So I don't care if you guys
15 want to draw up an order and I can sign it so that I
16 can have the stamp of the Court, even though I would
17 say that's sufficient. Your subpoena was sufficient
18 but ---

19 MR. WHITE: (Interposing) Where are the
20 discs?

21 THE COURT: I'm not --- this is all that
22 appeared.

23 Counsel, anything to talk about with respect to
24 this or are we just satisfied to ---

25 MR. WHITE: Nothing to talk about right

1 now.

2 THE COURT: Okay. All right. Very well.

3 Thank you.

4 Doctor, would you come back up here if you would?

5 Parties are ready and we can proceed with the
6 trial.

7 Thanks.

8 THE COURT REPORTER: Doctor, how do you
9 spell your first name?

10 THE WITNESS: C O R M A C.

11 THE COURT REPORTER: I keep wanting to add
12 a K on there.

13 THE WITNESS: Everybody does, but there's
14 no K.

15 THE CLERK: All rise for the Jury.
16 (Whereupon the Jury was returned to the courtroom.)

17 * * *

18 THE COURT: Good afternoon everyone.
19 Thanks for your promptness. Again, I appreciate
20 that. You may all be seated.

21 The record will reflect that the Jury is back.
22 The case has been called. Counsels' names have been
23 noted and the Doctor is back on the stand.

24 And you're reminded you're still under oath and
25 required to testify truthfully and honestly, okay?

1 Thank you.

2 Mr. White, you may proceed.

3 MR. WHITE: Before I inquire I do have a
4 couple more definitions if you'd be so kind?

5 THE COURT: Okay. That's fine.

6 WHEREUPON DOCTOR CORMAC MAHER HAVING BEEN PREVIOUSLY
7 SWORN TO TELL THE TRUTH, THE WHOLE TRUTH AND NOTHING
8 BUT THE TRUTH WAS EXAMINED AS FOLLOWS:

9 CONTINUED RECROSS-EXAMINATION

10 BY MR. WHITE:

11 Q The term is ischemic cascade?

12 A The ischemic cascade refers to a sequence of chemical
13 reactions usually within the cell as the cell is in
14 the process of dying from ischemia. Where one step
15 leads to another, releases toxins which leads to
16 another problem and so on. And it's a --- it's a ---
17 essentially a --- our way of understanding how cells
18 die as they're dying from ischemia.

19 Q And uh --- the term hygroma. H Y G R O M A.

20 A A hygroma is a collection of --- usually of spinal
21 fluid as it's currently used. Usually within the
22 subdural space.

23 Q Doctor, is it --- is it a fair statement to say for a
24 lay person, a parent for instance who has a young
25 child, indications of a head injury would be vomiting,

1 one indication?

2 A Could be.

3 Q Lethargy?

4 A Could be.

5 Q Tiredness?

6 A Sometimes.

7 Q Irritability?

8 A Sometimes.

9 Q And a child just not normally herself or his self?

10 A Again, sometimes.

11 Q Doctor, are you familiar with a Doctor Ronald

12 Uscinski?

13 A No.

14 Q Now if I could ask you to umm --- give the Jurors
15 further education. A subdural hematoma in its acute
16 stage, meaning it's new, correct?

17 A Correct.

18 Q Okay.

19 And is it a fair statement that the medical
20 profession really doesn't know how much force is
21 necessary to create or cause an acute subdural
22 hematoma?

23 A It can be different in different situations that's
24 true.

25 Q But as far as a quantum of force, of mega --- can we

1 say in your profession, this is how much force is
2 necessary?

3 A You're correct. If what you're saying is, 'There are
4 certain forces that's going to be predictive of
5 causing a subdural every time and below that threshold
6 will never cause a subdural,' that's correct. So it
7 can be different in different cases.

8 Q Different in different cases?

9 A Yes.

10 Q So as far as a unit of measurement we don't have that?

11 A Well that's true.

12 Q And uh --- we know that chronic subdural hematomas
13 must start as an acute subdural hematoma?

14 A That is correct.

15 Q And acute subdural hematomas can start in a variety of
16 different ways, correct?

17 A That's correct.

18 Q Even at birth?

19 A That's correct.

20 Q Sometimes a trivial fall?

21 A Sometimes.

22 Q Sometimes a more severe traumatic impact injury,
23 correct?

24 A That's correct.

25 Q And umm --- acute subdural hematomas sometimes resolve

1 themselves without any kind of medical intervention?

2 A That is correct.

3 Q Many times is it conceivable Doctor that the medical
4 profession might not treat the majority of subdural
5 hematomas, acute in their nature, because people don't
6 know their children have them, don't take them to the
7 doctor?

8 A We don't know how many children are out there that we
9 don't know about, that don't see us. Of the children
10 that do see us in this age group, it's true that we
11 probably don't operate on the majority of them, yes.

12 Q And when an acute subdural hematoma goes into the
13 subacute phase and then into the chronic phase, what
14 is happening in this process? Can you explain to the
15 Jury how you move from acute to chronic?

16 A Mm-hmm. Lots of things are happening in this
17 process. As a generality from a surgeon's
18 standpoint, an acute subdural hematoma is a clot,
19 usually has some form or substance to it like jelly
20 almost. And as it goes through the process of aging
21 it tends to get thinner over time so that by the time
22 it's a chronic subdural hematoma it's more watery or
23 fluid-like. That again, from a surgeon's standpoint,
24 is the most critical difference between an acute
25 subdural hematoma and a chronic subdural hematoma.

1 There are other changes on a more cellular level that
2 other people are more qualified to discuss but it has
3 to do with the oxygen characteristics changing over
4 time within the hematoma and so on. But from a
5 surgeon's standpoint the most important difference is
6 that the acute subdural hematomas tend to have some
7 form or substance like jelly and then the chronic ones
8 are watery.

9 Q And umm --- the process of going from acute to
10 subacute to chronic? It's possible that this
11 hematoma grows, isn't that true?

12 A It happens sometimes.

13 Q And what is the mechanism that causes it to grow?

14 A Mm-hmm. The usual mechanism is that there's an
15 osmotic effect. Osmotic effect is a little bit
16 difficult to explain but it's a --- because of the
17 chemical makeup of the hematoma itself, water has a
18 tendency to cross into that hematoma and can cause a
19 little bit of a volume expansion over time. So
20 sometimes subdural hematomas, as you've already said
21 Counselor, go away on their own with no treatment.
22 And occasionally they'll grow over time.

23 Q Okay.

24 And occasionally they'll grow over time and
25 become symptomatic?

1 A Occasionally.

2 Q Okay.

3 And occasionally that symptom --- that
4 symptomatic uh --- state can cause severe
5 complications?

6 A Occasionally.

7 Q Including death?

8 A If it gets big enough.

9 Q And this concept of rebleeding Doctor ---

10 A (Interposing) Mm-hmm.

11 Q (Continuing) uh --- rebleeding of a chronic subdural
12 hematoma, can you explain to the Jury what that ---
13 that process is?

14 A Sure. Subdural hematomas as they're aging, and we
15 talked about they're going from the jelly-like
16 substance to a more watery substance, one other thing
17 that can happen is that it can organize a little bit
18 on a cellular level and form little membranes. Those
19 membranes are friable or delicate and sometimes have
20 little blood vessels in them. Sometimes can bleed by
21 themselves. And sometimes therefore we see subdural
22 hematomas form and then rebleed into themselves and
23 grow.

24 Q And sometimes the rebleeding can be spontaneous, is
25 that a fair statement?

1 A It's fair to say that at least sometimes we don't
2 recognize the exact mechanism for why rebleeding
3 occurs, yeah.

4 Q And sometimes it can be traumatic, the cause of a
5 rebleed?

6 A Sometimes. For sure sometimes it's traumatic and
7 sometimes the trauma may be relatively minor if a
8 subdural bleeds into itself to where we don't
9 recognize it.

10 Q And a chronic subdural hematoma that is in its
11 symptomatic stage, from a parent's standpoint, would
12 it be uncommon for that parent to see their child
13 vomiting?

14 A Can you repeat the question?

15 Q In a chronic subdural hematoma that's in its
16 symptomatic stage ---

17 A (Interposing) Sure.

18 Q (Continuing) from a parent's standpoint ---

19 A (Interposing) Okay.

20 Q (Continuing) observing their child who has a chronic
21 subdural hematoma symptomatic ---

22 A (Interposing) That is symptomatic.

23 Q Is symptomatic. Not uncommon to see the child
24 vomiting?

25 A The child could be vomiting.

1 Q Irritable?

2 A It's possible.

3 Q Lethargy, tiredness?

4 A All of those things are possible.

5 Q And including the fact --- including the child not
6 having the same normal disposition?

7 A All of those things are possible but not necessary.

8 In other words, some people with symptomatic subdural
9 hematomas don't have those symptoms.

10 Q But sometimes they do?

11 A Sometimes they do.

12 Q Umm --- in this particular case, Madison had five
13 frontal chronic subdural hematomas, isn't that true?

14 A Mm-hmm. My recollection of the MRI scan and the CT
15 scan was that it was worse on the left in terms of the
16 chronically.

17 Q Yeah, but we had five frontal.

18 A Mm-hmm.

19 Q Both frontal lobes had chronic subdural hematomas,
20 correct?

21 A I follow you. Yeah. Definitely worse on the left.

22 Q Of an unknown date in its etiologies, beginning,
23 correct?

24 A That's true to a certain extent except that we don't
25 see it on the MRI scans from a couple of months

1 earlier. So I think that that helps us date it at
2 least more recently than that.

3 Q So as the MRI scans, you're talking about August
4 thirty-first (31st)?

5 A That's correct. Yeah.

6 Q Okay.

7 That your belief is that the acute subdural
8 hematoma that became chronic subdural hematoma as of
9 November thirtieth (30th), must have occurred after
10 August thirty-first (31st)?

11 A Right. And after that CT scan when it was September
12 ---

13 Q (Interposing) September eleventh (11th).

14 A Eleventh (11th), right.

15 Q Okay.

16 And you testified earlier though that the, as far
17 as the sophisticated mechanism for measuring of the
18 MRI, in your opinion, is a better mechanism for
19 measuring?

20 A For measuring blood.

21 Q Uhh --- hematomas. Blood in the brain?

22 A It depends. The MRI is certainly better than CT
23 scans in some respects. For looking for very acute
24 blood occasionally the CT scan is actually quite
25 sensitive because it's bright white on a CT scan.

1 The MRI scan is certainly better in other respects
2 though.

3 Q But certainly something could show up in the MRI that
4 did not show up on a CT scan?

5 A That's possible.

6 Q Umm --- and the blood products that were seen on
7 August thirty-first (31st), two thousand six (2006) in
8 the MRI on Madison, that was an acute subdural
9 hematoma, was it not?

10 A The August thirty-first (31st) MRI scan?

11 Q The August thirty-first (31st) MRI.

12 A You're talking about the blood in the left parietal
13 area?

14 Q Yes. That ---

15 A (Interposing) No. That was not a subdural. The
16 blood we're talking about from August thirty-first
17 (31st) was liquid within the brain.

18 Q Okay.

19 And your review of the records of the University
20 of Michigan uh --- regarding the treatment of Madison
21 McBurney. There are several doctors who indicate
22 that that were --- that was an acute subdural
23 hematoma.

24 A Are you talking about ---

25 Q (Interposing) Doctor Leber.

1 A I don't think you're correct. You're talking about
2 the August thirty-first (31st) scan?

3 Q Sure.

4 A I'd like to see that record.

5 Q Hold on. If I --- mine's all marked up. Page
6 thirty-one (31) to sixty-seven (67). It's Doctor
7 Steven Leber.

8 MR. WHITE: If I may approach Judge?

9 THE COURT: Sure.

10 Q **(By Mr. White, continuing)** All right. And this is
11 a mess. So I --- I just put in some stuff. So this
12 is what I'm looking for, right here, Doctor Leber.

13 MS. POPE-STARNES: I'm going to object
14 here. He's indicated he would like to see the report
15 from that test. Not Doctor Leber's report who is
16 someone who treated the child after the November
17 thirtieth (30th) admission.

18 THE COURT: What are you --- go ahead.
19 Do you have that?

20 MR. WHITE: The August thirty-first (31st)
21 report?

22 THE COURT: Is that what you're showing
23 him?

24 MR. WHITE: No. I'm showing him Doctor
25 Leber's notes. If he says he wants to see the

1 report, I'll gladly show him ---

2 THE WITNESS: (Interposing) I would like
3 to see the MRI report.

4 MS. POPE-STARNES: That --- that --- I
5 understand that.

6 THE COURT: Okay. All right. See if you
7 ---

8 MR. WHITE: (Interposing) I'll see if I
9 can find it.

10 Is that what you just put in?

11 MS. POPE-STARNES: It should be in the very
12 back in a paper-clip section.

13 MR. WHITE: Okay.

14 THE WITNESS: This is not in the sequence
15 that we're used to.

16 Q (By Mr. White, continuing) I do believe it covers
17 the time period.

18 A I don't think the report is in here. Well maybe
19 fifty-five (55).

20 MS. POPE-STARNES: I believe it starts on
21 page two-eighty-five (285) of your discovery.

22 Q (By Mr. White, continuing) Did you find the August
23 thirty-first (31st) MRI?

24 A No. I've got the CT report from afterwards.

25 THE COURT: Is there a way Doctor that

1 someone else could look for it possibly?

2 THE WITNESS: I found it here.

3 THE COURT: Oh, you've got it, okay.

4 THE WITNESS: The MRI report from the
5 radiologist does not specify. But this was not
6 interpreted as a subdural hematoma.

7 Q (By Mr. White, continuing) But you're saying the
8 report itself dated August thirty-first (31st), the
9 MRI, does not specify, correct?

10 A That's correct. All we can say based on the report
11 is that it was blood adjacent to the left parietal
12 lobe, the left parietal convexity.

13 Q And you actually in part of your treatment of Madison
14 read the MRI yourself, correct?

15 A That is correct.

16 Q Okay.

17 And it's your conclusion that based upon your
18 reading of the test that this was not an acute
19 subdural hematoma?

20 A Which part?

21 Q Is that a fair statement?

22 A No. That's --- that's not correct.

23 Q So if you could tell me --- tell me how I'm wrong?

24 A When I first evaluated Madison my impression was that
25 the posterior hematoma on the left was acute and that

1 the frontal one on the left was not.

2 Q I'm talking about the August thirty-first (31st) MRI.

3 A Yeah. This --- when I was treating Madison this
4 didn't have anything to do with my neurosurgical
5 treatment at the time so this is investigation that we
6 did after the fact.

7 Q Okay.

8 So is it a fair statement that you did not read
9 the August thirty-first (31st) MRI as part of your
10 treatment of Madison at the time that you were
11 treating her?

12 A At the time that I put the ventriculostomy in?

13 Q Right.

14 A Not on that first day. That's correct.

15 Q Okay.

16 And when was the first time that you read the
17 August thirty-first (31st) MRI?

18 A I can't say exactly but it was during her
19 hospitalization.

20 Q Okay.

21 But before she passed?

22 A That's correct.

23 Q Okay.

24 And after reading the MRI, is it your statement
25 that that was not a subdural hematoma, an acute

1 subdural hematoma that was detected on August thirty-
2 first (31st), two thousand six (2006)?

3 A My impression is that the blood on the left parietal
4 convexity was, I can't age it, but it was either blood
5 or a lipoma based on that first MRI scan. Lipomas
6 shouldn't disappear on their own therefore we're left
7 with the impression that it was blood.

8 Q Okay.

9 A Okay?

10 Q And could you say ---

11 A (Interposing) Exactly how old it was I can't say.
12 It didn't enter into my calculation except that it was
13 there.

14 Q And did that blood on August thirty-first (31st),
15 blood equal hematoma?

16 A Blood is a hematoma, yes.

17 Q Thank you. Thank you.

18 You just couldn't tell its age, correct?

19 A No.

20 Q Now Doctor, you've indicated that it is, excuse me, if
21 we could back up.

22 Do you have that August thirty-first (31st) MRI?

23 A Yeah.

24 Q And it says at some point that the cerebral volume is
25 low. Excuse me. It says cerebral --- cerebral

1 volume is mildly low for patient's age.

2 Is there any significance to that statement?

3 A No. I think I see what you're getting at and I
4 wasn't impressed with the extracts, those spaces were
5 large.

6 Q Okay.

7 So as far as what we talked about earlier about
8 this intra-axial spaces ---

9 A (Interposing) Right.

10 Q (Continuing) and the possibility of blood, you
11 didn't see that as being a possibility for Madison at
12 this point?

13 A I didn't think it was likely for Madison at this
14 point.

15 Q Okay. Thank you.

16 A I would say that usually when we see that phenomenon
17 it's because the extra-axial spaces are significantly
18 enlarged and I didn't think that was the case for her.
19 Everybody has extra-axial spaces.

20 Q Right.

21 A The question is, is it significantly larger than
22 normal. I didn't think so.

23 Q Sure. Thank you.

24 Now you've indicated in your direct testimony
25 Doctor that Madison suffered a severe injury, much

1 greater than what you believed to be a subdural
2 hematoma?

3 A Correct.

4 Q Okay.

5 And --- but you did not indicate the cause of the
6 injury. Are you comfortable making that clear for
7 me?

8 A I think the --- the other doctors that were caregivers
9 at the time have come to some conclusions about the
10 cause of the injury based on many other factors
11 besides the brain injuries that I was treating. And
12 based on that they've come to the conclusions that I'm
13 comfortable with.

14 Q Okay.

15 As far as you're conclusions?

16 A My conclusion can only go so far. My conclusion is
17 that --- that Madison had subdural hematomas of
18 different ages as well as evidence of other brain
19 injury. As well as a very, very diffuse brain injury
20 going beyond what we see from subdural hematomas of
21 that size.

22 Q Okay.

23 And based upon that conclusion your --- is it
24 your conclusion that uh --- excuse me. Based upon
25 that finding is your conclusion that the injury must

1 have been nonaccidental?

2 A I told you that I didn't come to that conclusion.

3 Q Okay. Thank you.

4 A That when other physicians did, I --- I could see why
5 they thought that.

6 Q You yourself did not come to that conclusion?

7 A I didn't come to a different conclusion. My
8 conclusion was that she was badly hurt and other
9 physicians ---

10 Q (Interposing) And I appreciate what other physicians
11 but ---

12 A (Continuing) tried to get to the bottom of it.

13 Q (Continuing) since you're testifying and I can't
14 cross-examine them unless they get up there.

15 A Yeah.

16 Q And you know from your treatment of Madison that she
17 had no skeletal injuries, isn't that true?

18 A That's correct. The, again, the other physicians did
19 a skeletal ---

20 Q (Interposing) I'm just asking you to answer the
21 question.

22 THE COURT: Hold on.

23 THE WITNESS: Well let me answer the
24 question.

25 THE COURT: You know ---

1 MR. WHITE: (Interposing) I'm not asking
2 what other physicians said I'm asking you.

3 MS. POPE-STARNES: Objection.

4 THE COURT: In fairness I think ---

5 MS. POPE-STARNES: (Continuing) The Court
6 was starting to rule and I think that would be more
7 appropriate than Counsel interrupting the witness.

8 THE COURT: In fairness Doctor, I think
9 that was an answer to the question.

10 Go ahead, Mr. White.

11 Q (By Mr. White, continuing) I'm just directing my
12 question to you. And so please just testify to what
13 you can testify to.

14 A Okay. Well let me say ---

15 Q (Interposing) There's no question in front of you
16 Doctor.

17 And there was no soft tissue injury to any
18 part of the body that you could see either, isn't that
19 true?

20 A I treated her brain injuries.

21 Q Did you see any soft tissue injury, detect, find
22 anything?

23 A No. But I think this line of questioning is not
24 appropriate for me. I really do.

25 Q Well I --- I guess that's up to the fellow sitting

1 right next to you.

2 THE COURT: In fairness find implies
3 sought. And he's not testifying that he sought it
4 but didn't see any is.

5 Q (By Mr. White, continuing) Then did you see we have
6 no fractures? Did you see that?

7 A Not that I could see.

8 Q Including any fractures of the skull, the calvarium,
9 isn't that true?

10 A That is true.

11 Q You said you weren't really looking for soft tissue
12 injury, correct?

13 A I was concerned with the brain injuries, that's
14 correct.

15 Q Okay.

16 And you weren't looking for any skin injuries
17 also, bruising, scrapes, things of that nature?

18 A Guess it depends what you mean. As a neurosurgeon
19 we're involved in the care team. We talked a lot to
20 other people. We're aware of what's going on with
21 the patient as they're going through this. Me
22 personally, was I the person in charge of looking for
23 soft tissue injuries and bone injuries? No, that's
24 not me. But I'm aware of what's going on as the
25 patient is getting cared for.

1 Q And you're aware that there was no indication
2 whatsoever of any injury to the soft tissues of this
3 child, correct?

4 A Soft tissue is a broad term. I'm aware of some other
5 injuries to the child.

6 Q You were aware --- were you aware of any soft tissue
7 injury?

8 A It depends what you mean by soft tissue. I'm aware
9 of ventral hemorrhages to the child.

10 Q Any soft tissue injuries to the neck?

11 A No, not that I'm aware of.

12 Q And even though you weren't looking, you were also
13 aware that there was no injuries indicant ---
14 indicated on the skin of the child, correct?
15 Bruising, scraping, things of that nature?

16 A Not that I'm aware of.

17 Q Did you form an opinion Doctor, as to when the injury,
18 the severe injury that you diagnosed occurred? Did
19 you form an opinion ---

20 A (Interposing) Mm-hmm.

21 Q (Continuing) as to when this severe injury that you
22 diagnosed occurred?

23 A It's difficult for me to pinpoint it down to an exact
24 hour or timeframe but I felt like it was shortly
25 before the patient arrived at the hospital. Whether

1 it was twenty-four (24) or twelve (12) or one hour
2 before the patient arrived in the hospital I can't
3 say. But I don't think it was many days before the
4 patient arrived in the hospital.

5 Q Did you form an opinion?

6 A At least with respect to the last bleed.

7 Q Okay.

8 Did you form an opinion as to when the prior
9 injuries occurred, the prior bleeding?

10 A You're talking about the chronic subdural?

11 Q Yes.

12 A I can't say. The large --- larger subdural up in the
13 left frontal area obviously occurred at least several
14 weeks before. Speculation.

15 Q Possibly, possibly months but definitely you believe
16 it occurred after the ---

17 A (Interposing) Again there wasn't a large subdural
18 there in that August scan so not many months before.

19 Q Okay. Thank you.

20 MR. WHITE: I have nothing further.

21 THE COURT: Ms. Pope-Starnes?

22 **REDIRECT EXAMINATION**

23 **BY MS POPE-STARNES:**

24 Q I just have a few questions Doctor.

25 Counsel asked you questions about a unit of

1 measurement of force that could cause these types of
2 injuries. Is there anyway to test for that?

3 A I'm not sure I understand the question. You mean as
4 an experimental ---

5 Q (Interposing) Yes.

6 A (Continuing) type of animal model? Sure. And
7 people have carried out such experiments. The
8 trouble is in reality when you're dealing with
9 patients, patients are made differently. And
10 sometimes it can be more force for some and less force
11 for others.

12 Q And testing on animals is not the same thing as a
13 human child?

14 A No.

15 Q Testing on dolls is not the same thing as a human
16 child?

17 A No.

18 Q And you can't test on human children?

19 A Obviously not. There's too much variability to make
20 any strong predictions about an exact mechanism that's
21 required to cause these injuries.

22 Q The symptoms, the range of symptoms that Counsel went
23 through, vomiting, lethargy, tiredness, irritability,
24 as a doctor, do you ever see these as symptoms of
25 things other than head injury?

1 A All the time. That, of course, is the great
2 difficulty is that patients without severe head
3 injuries can have some of these symptoms. And
4 patients with severe head injuries sometimes can have
5 completely different symptoms so it can be --- it can
6 be tricky.

7 Q Counsel talked to you about the progression of an
8 acute hematoma to chronic ---

9 A (Interposing) Right.

10 Q (Continuing) and a rebleed.

11 In your opinion is that what was going on with
12 Madison McBurney?

13 A It doesn't fit with the facts very easily. A lot of
14 long leaps of judgment there which are pretty hard to
15 believe. Rebleeding when it occurs in a subdural
16 hematoma usually occurs within the subdural hematoma
17 space because that space has already been expanded a
18 little bit. It's the easiest place for rebleeding to
19 occur. In other words, if it's a left frontal
20 hematoma it's going to rebleed, usually it rebleeds in
21 the adjacent area or the same area. Pretty hard to
22 believe it rebleeds for the first time in an area
23 that's not adjacent all the way on the other side of
24 the head. So again that seems unlikely.

25 Q Were there any other reasons why it doesn't fit with

1 the facts?

2 A Well there are other things that we see on the MRI
3 scan such as the dot of diffusion change on the MRI of
4 the left temporal lobe which suggests that there may
5 be another space involved. There's the findings
6 noted by the other physicians taking care of her. I
7 don't know whether I should address that or not.
8 Probably not. But the findings of the other
9 physicians certainly doesn't support that idea either.
10 Finally the spaces that she had were not terribly
11 large and it's not typical for a patient that we see
12 that has a problem with subdurals that bleed and
13 rebleed and rebleed. Umm --- finally also, I just
14 said finally but here's another point, the brain
15 injury that she had, the very diffuse brain injury
16 that she had with the massive rise in the intracranial
17 pressure, doesn't go along with a relatively small
18 subdural hematoma that bled in a different location
19 again in a relatively small volume. I'd struggle to
20 explain how a very small hematoma like that would
21 cause such a diffuse injury. So for all of those
22 reasons it's a --- it seems unlikely.

23 Q Doctor, I know that you had told the Jury on cross-
24 examination your job is the brain. Umm --- are there
25 other physicians whose responsibility it is to do a

1 physical examination of the body for injuries to the
2 skin?

3 A Absolutely. There's a number of other physicians.
4 There's ER physicians that would see a patient like
5 Madison in the emergency department for a complete
6 examination. There's ICU physicians that are ---
7 that take a more general view than the neurosurgeon is
8 able to take while the patient has been admitted to
9 the hospital in the intensive care unit. There are
10 child protection type physicians that become involved
11 in situations like Madison's who are in charge of
12 performing a complete physical examination on a
13 patient like Madison. There's ophthalmology
14 physicians that are in charge of looking in the eyes
15 to look for signs of trouble with the eyes which I
16 think you'll hear about at some other time. So
17 there's a large team of people that take care of a
18 patient like Madison. And although we're a part of
19 that team for sure there are other people that are
20 involved.

21 Q Now you testified that umm --- in the records that you
22 reviewed there's no evidence of fractures?

23 A Yeah, that's correct.

24 Q Have you seen children before who have suffered from
25 traumatic brain injury who do not have fractures and

1 do not have bruises?

2 A Absolutely.

3 Q Thank you.

4 MS. POPE-STARNES: Your Honor, I have no
5 other questions of this witness.

6 THE COURT: Thank you.

7 Mr. White?

8 MR. WHITE: I have no other questions.

9 THE COURT: Thank you Doctor. You're all
10 set.

11 MS. POPE-STARNES: May he be excused?

12 THE COURT: Any objections?

13 MR. WHITE: No objection.

14 THE COURT: Yep. You can be excused.

15 Thank you Doctor.

16 MS. POPE-STARNES: Your Honor, the People
17 would call Sergeant Paul Sumner to the stand.

18 THE COURT: Okay.

19 THE CLERK: **Do you swear that the testimony**
20 **you are about to give will be the truth so help you**
21 **God?**

22 THE WITNESS: **I do.**

23 THE COURT: Thank you. You can have a
24 seat there.

25 MS. POPE-STARNES: May I have just a

1 moment, Your Honor?

2 THE COURT: You may.

3 (Whereupon a brief delay was had.)

4 * * *

5 MS. POPE-STARNES: May I proceed?

6 THE COURT: You may.

7 MS. POPE-STARNES: Thank you.

8 S E A R G E A N T P A U L S U M N E R

9 WAS THEREUPON CALLED AS A WITNESS HEREIN, AND AFTER
10 HAVING BEEN FIRST DULY SWORN TO TELL THE TRUTH, THE
11 WHOLE TRUTH, AND NOTHING BUT THE TRUTH WAS EXAMINED
12 AND TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MS. POPE-STARNES:

15 Q Sir would you please state your name and spell your
16 last name for the record?

17 A My name is Paul Sumner. S U M N E R.

18 Q How are you employed Sir?

19 A I'm currently a police sergeant with Northville
20 Township Police in Wayne County.

21 Q How long have you been a police officer?

22 A Approximately eighteen (18) years.

23 Q I'd like to direct your attention back to nineteen-
24 ninety-eight (1998).

25 What department did you work for at that time?

1 A At that time I was a Detective for Northville Township
2 Police Department.

3 Q How long did you work as a detective?

4 A Eight years.

5 Q Specifically Sergeant Sumner I'm going to direct your
6 attention to umm --- approximately March second of
7 nineteen-ninety-eight (1998).

8 Were you involved in an investigation involving
9 the injuries of four month old by the name of Nicholas
10 Kennedy?

11 A Yes I was.

12 Q What did you do when you received that assignment?

13 A I received an assignment of a possible abuse case at
14 which time I learned where the residence was, where
15 the child lived prior to being hospitalized. And I
16 proceeded to that residence to attempt to interview
17 the parents, the caretakers or whoever was at the
18 house.

19 Q Where was the residence?

20 A It was in Northridge Apartment complex off of Seven
21 Mile in Northville, Michigan.

22 Q Do you recall approximately what time of day it was
23 that you went to that residence?

24 A It was approximately three-thirty (3:30) in the
25 afternoon on, I believe, it was March second,

1 nineteen-ninety-eight (1998).

2 Q Did you find anyone at home?

3 A Yes I did.

4 Q Who?

5 A Mr. Steven McBurney.

6 Q Would you recognize Mr. McBurney if you saw him again?

7 A Yes. He's seated in the --- next to Defense Counsel
8 in the uh --- blue sport coat.

9 MS. POPE-STARNES: May the record reflect
10 that the witness has identified the Defendant?

11 THE COURT: Any objection?

12 MR. WHITE: No objection.

13 THE COURT: So noted.

14 Q **(By Ms. Pope-Starnes, continuing)** Was anyone with
15 you when you went to the residence to interview Mr.
16 McBurney?

17 A I had a uniformed officer with me at the time.

18 Q Okay.

19 Were you in uniform or plainclothes at that time?

20 A I was a detective in plainclothes at that time.

21 Q Did you speak with Mr. McBurney?

22 A Yes I did.

23 Q Was he under arrest at the time?

24 A No he was not.

25 Q Where did you speak with him?

1 A Initially I --- the way the apartment complex is setup
2 is there's --- you have to buzz through the exterior
3 door to get into the internal doors. Umm --- there
4 was a buzz. I then subsequently went in. Umm ---
5 Mr. Burney (sic) allowed me into his house and we sat
6 at his kitchen table and spoke.

7 Q Did you ask Mr. McBurney questions about how Nicholas
8 Kennedy was injured?

9 A Yes I did.

10 Q What, if anything, did he say about that?

11 A Umm ---

12 MR. WHITE: Your Honor, I just want to have
13 my standing objection on all of this but I'm not going
14 to continue to object but I'm certainly ---

15 THE COURT: (Interposing) Yep. No
16 absolutely it's noted. Thank you Mr. White.

17 Go ahead.

18 Q **(By Ms. Pope-Starnes, continuing)** Go ahead.

19 A At the time of the investigation when I sat down with
20 Mr. McBurney at his house, I explained to him that I
21 was at his residence on a uh --- abuse investigation
22 involving his son, Nicholas Kennedy. My objections
23 (sic) at that time were to determine who was watching
24 the child, who were the caretakers of the child and to
25 obtain some preliminary information umm --- about how

1 the child was cared for and things of that nature.
2 Subsequently while speaking with Mr. McBurney, I did
3 ask him if he knew of any plausible explanations of
4 how his child was injured.

5 Q And what was his response?

6 A He advised me that he did not know of any reasons why
7 his child was injured. And then I asked him if he --
8 - if he had injured his child. At that time he told
9 me that he had not injured his child. Umm --- I
10 asked him for a written statement on the matter. Uh
11 --- he completed a written statement on the matter.
12 In his written statement he explained that he had
13 fallen one time with the child but the child was not
14 injured. Umm --- I advised him that uh --- I would
15 subsequently be in contact with him. And that I was
16 beginning the investigation, just developing my
17 building blocks on the case.

18 I then left his police --- I left his apartment
19 and went back to my police department.

20 Q Now Sergeant, the information about him previously
21 falling with the child, when was the first time that
22 he told you about that?

23 A That was in his written statement, on the initial
24 written statement. I subsequently did have another
25 written statement.

1 Q When you spoke with him before he gave you the written
2 statement did he tell you about that large fall?

3 A Yes. He made reference to a uh --- baby gate and
4 then he wrote it in his written statement.

5 Q And did you ask him who, if anyone else, was watching
6 the child that day besides him?

7 A At that time I had asked him who were the primary
8 caretakers of the child. And Mr. McBurney advised
9 that he was, his girlfriend at the time Christa
10 Kennedy was, and that his girlfriend's mother, Linda
11 Kennedy also cared for the child. Umm --- and then I
12 spoke with him further and determined that on the day
13 of the injury, the day --- I believe it was on the
14 February twenty-seventh (27th), nineteen-ninety-eight
15 (1998) when his child stopped breathing, he was the
16 lone caretaker of the child when he subsequently
17 dialed nine-one-one (911) for a child not breathing.

18 Q Did he give you some --- any kind of information as to
19 umm --- like times as to when on the date of the
20 injury as to when individuals were caring for him?

21 A Yes. He did give me a rundown that he worked the
22 midnight shift and that his wife took care of the
23 child while he was at work. And then when he would
24 come home from work he would turn his --- he would
25 turn Nicholas, his son, over to Christa, the

1 biological mother, and that would normally take place,
2 I believe, it was around six-thirty (6:30) in the
3 morning. And on the date in question when the ---
4 the --- Nicholas stopped breathing it was around the
5 time of six-thirty (6:30) or seven (7:00) when he came
6 home. I believe he came home around six (6:00),
7 sixish. And uh --- Christa the mother ended up
8 leaving about seven o'clock (7:00) for her occupation.

9 Q Do you have a copy of that written statement with you?

10 A I have a copy of the written statements. Yes, Ma'am.

11 Q And where would that be right now?

12 A It would be in that case and if you hand it to me I
13 can produce it.

14 MS. POPE-STARNES: May I approach?

15 THE COURT: You may.

16 Q **(By Ms. Pope-Starnes, continuing)** Are these records
17 kept in the normal ordinary course of business of your
18 department?

19 A At that time they were kept in uh --- a different type
20 of file system, but yes.

21 Q While you're looking for that I'm going to move on.

22 So after your interview concluded you left the
23 apartment?

24 A After preliminary invest --- investigation I left and
25 went back to my department.

1 Q Okay.

2 And the uniformed officer that you were there
3 with, did he leave as well?

4 A Yes he did.

5 Q Okay.

6 Did there come a point where you spoke with the
7 Defendant again?

8 A Yes. I --- I spoke with him later in the evening
9 when he called my police department and requested to
10 speak with me.

11 Q On the same date that you had spoken with him at his
12 home?

13 A Yes.

14 Q Do you recall approximately what time it was that he
15 called you?

16 A It was approximately seven-thirtyish (7:30). Seven-
17 thirtyish (7:30) that he arrived at the police
18 department so subsequently a little bit before that.
19 He's only a couple of miles from the police
20 department.

21 Q Did you speak with him at the police department?

22 A I did speak with him in one of the offices at
23 Northville Township Police Department.

24 Q Was anyone else present besides you and the Defendant?

25 A Present for portions of the interview uh --- was at

1 that time, Sergeant John Worth.

2 Q And was the Defendant in custody at that point?

3 A No. When Mr. McBurney came to the police station um

4 ---

5 MR. WHITE: (Interposing) I believe he's
6 answered the question. 'Yes' or 'No'.

7 MS. POPE-STARNES: Your Honor, this is my
8 questioning. Non-responsive is an objection for the
9 questioner only.

10 THE COURT: I'll allow it.

11 Go ahead.

12 THE WITNESS: When --- when Mr. McBurney
13 had contacted me and came into the station, I
14 subsequently said, 'Well you contacted me. You
15 understand you're not under arrest and you're free to
16 leave. And that we're going to be speaking in an
17 office.'

18 And then I --- I afforded him at the conclusion
19 of speaking with me, he would be leaving for the
20 night.

21 Q Did he indicate to you whether or not he under ---

22 A (Interposing) And that he may as well stop the
23 interview at any point and leave.

24 Q Okay.

25 Did he indicate to you whether or not he

1 understood those things?

2 A Yes. He understood those. I was very confident of
3 that.

4 Q And did he agree to speak with you?

5 A Yes.

6 Q What happened then?

7 A I spoke with Mr. McBurney for several minutes umm ---
8 at which time he had explained to me that there was an
9 incident where he had dropped Nicholas while he was
10 caring for him and that Nicholas had fallen onto the
11 ground and that their (coughing) excuse me, their
12 apartment was a carpeted cement floor. And that
13 Nicholas had hit his head on the back of the --- on
14 the back of his head onto the cement carpeted floor.
15 He then --- I then asked him, 'If he told anyone about
16 that.' He then informed that he did not tell anyone
17 about the --- about the fall. And then the next day
18 Christa Kennedy and there was another family member
19 which I don't recall, had mentioned to me the comment
20 that his head was swollen and that he did not tell his
21 wife that he had dropped the child at that time.

22 Q Now Christa Kennedy was Nicholas's mother?

23 A Christa Kennedy was the biological mother of Nicholas,
24 and is currently.

25 Q Okay.

1 And uh --- were, if you know, were Mr. McBurney
2 and Ms. Kennedy married at that point?

3 A It's was my understanding that they were boyfriend and
4 girlfriend.

5 Q Okay.

6 And did he tell you how old Nicholas was when he
7 allegedly accidentally dropped him?

8 A I believe it was approximately a month-and-a-half old.

9 Q Did he tell you how far Nicholas had allegedly fallen?

10 A Two to three feet.

11 Q After you talked about this alleged incident, what
12 happened next in the interview?

13 A Umm --- Mr. McBurney continued to sit in the chair.
14 He was upset. He hadn't began crying yet but he was
15 looking down. He was acting umm --- like there was
16 more --- more to speak about. Often when you do
17 interviews, some will start to talk to you and they'll
18 tell you a portion of a --- of a event and then
19 they'll stop and they'll hesitate. If you give them
20 time or if you ask them, 'Is there more information
21 that we need to speak of', after waiting several
22 minutes often they will explain additional facts that
23 took place in the incident. And then you'll have
24 various points again where you'll stop. And it's
25 like the tip of an iceberg where you keep going each

1 time there's a pause. And we had paused for a
2 moment.

3 Q So you did pause in this case?

4 A There was a slight pause when Mr. McBurney --- and
5 then subsequently I had made reference to him that we
6 needed to know all the information for the doctors so
7 that we could get Nicholas some help. And then at
8 that point umm --- he started crying. And then he
9 explained some other events that took place up on the
10 day that the child stopped breathing.

11 Q What did he say?

12 A He explained to me that he came home from his midnight
13 shift. And then while on his midnight shift, excuse
14 me, once he was home from his midnight shift, his wife
15 was getting, or excuse me, Christa was getting ready
16 to leave for work and that she turned over the child
17 to him. It was in the area of about seven a.m.
18 (7:00am). And that he took over the normal caring of
19 the child which entailed at that time giving him a ---
20 a bottle. He explained to me that uh --- Nicholas
21 was upset and was crying and that he was trying to
22 give him a bottle. And that he was walking around
23 the apartment and he was bouncing him on his knee ---
24 on his --- bouncing him while he was giving him a
25 bottle. Excuse me.

1 crying. That he got upset. That he was frustrated
2 and that he began shaking and bouncing the baby,
3 Nicholas. At which point Nicholas went limp, stopped
4 breathing. Subsequently Northville Township --- he
5 called Northville Township Police Fire and Rescue and
6 the emergency staff responded and subsequently took
7 Nicholas to an emergency facility.
8

9 Q Did you talk to the Defendant about whether or not his
10 bouncing and shaking of the baby was too hard?

11 A Yes Ma'am.

12 Q And what did he say?

13 A He advised me that he --- that it was harder than
14 Christa had done and that he knew that the bouncing,
15 shaking, and it's in my report, but that his actions
16 caused the injury to his son. He then subsequently
17 completed another written statement and put it into
18 his own words.

19 Q And do you have both of those written statements with
20 you?

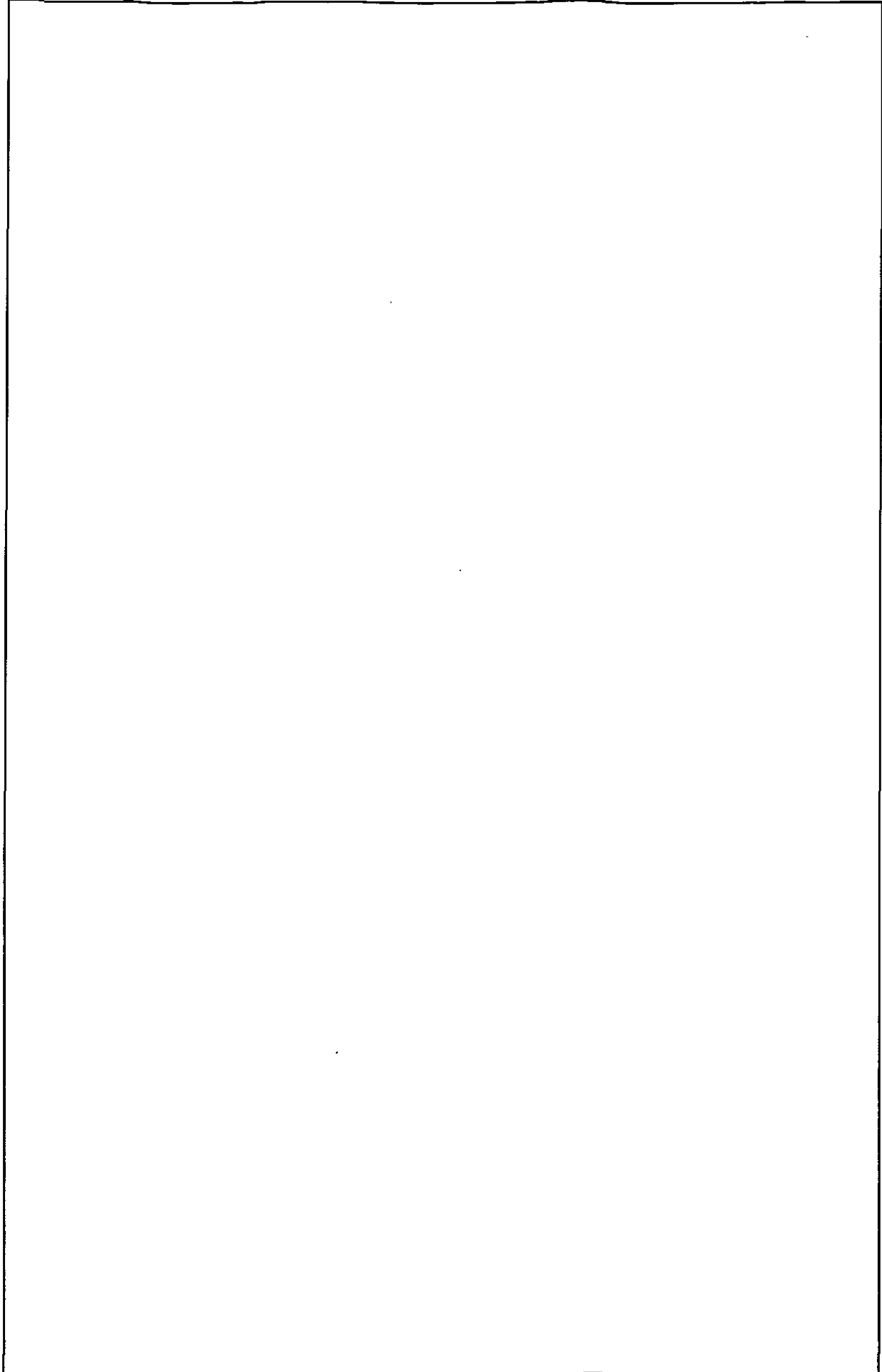
21 A Yes I do.

22 MS. POPE-STARNES: May I approach the
23 witness, Your Honor?

24 THE COURT: You may.

25 THE WITNESS: Would you like me to remove

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1 them?

2 MS. POPE-STARNES: Yes please.

3 THE WITNESS: The statement from his
4 apartment and the statement from his confession at
5 Northville Township Police Department.

6 MS. POPE-STARNES: Please let the record
7 reflect that I'm showing Counsel People's Proposed
8 Exhibits 7 and 8.

9 May I approach the witness again, Your
10 Honor?

11 THE COURT: You may.

12 **(By Ms. Pope-Starnes, continuing)** Sir, I'm showing you
13 what now has been marked as People's Proposed Exhibit
14 7. Do you recognize that?

15 A Yes Ma'am.

16 Q And what is that?

17 A That's Mr. McBurney's initial statement at his
18 residence in the Northridge Apartment complex.

19 Q And has this been altered in anyway?

20 A No Ma'am.

21 Q It's a fair and accurate copy of the statement that he
22 gave you on or about March second of nineteen-ninety-
23 eight (1998)?

24 A Nineteen-ninety-eight (1998), yes Ma'am.

25 Q Thank you.

1 I'm showing you now what's been marked as
2 People's Proposed Exhibit 8 and ask you if you
3 recognize that?

4 A Yes Ma'am, I do.

5 Q And what is that?

6 A This is the second written statement that Mr. McBurney
7 made. This one was at Northville Township Police
8 Department in one of our offices.

9 Q And is it a fair and accurate copy of that statement?

10 A Yes it is.

11 Q Has it been altered in anyway?

12 A No.

13 MS. POPE-STARNES: I would move for the
14 admission of People's Proposed Exhibit 7 and 8 as
15 People's Exhibit 7 and 8.

16 THE COURT: Recognizing the fundamental
17 objection, anything else beside that?

18 MR. WHITE: No.

19 THE COURT: Okay. And that objection is
20 preserved and I'll admit the Exhibits.

21 MR. WHITE: Thank you.

22 MS. POPE-STARNES: May I have just one
23 moment please, Your Honor?

24 THE COURT: Yes.

25 (Whereupon a brief delay was had.)

1 * * *

2 MS. POPE-STARNES: Thank you. I have no
3 other questions.

4 THE COURT: Thank you.

5 Mr. White.

6 **CROSS-EXAMINATION**

7 **BY MR. WHITE:**

8 Q Detective?

9 A Yes, Sir.

10 Q Uh --- March of two-thousand-nine (2009) --- March of
11 nineteen-ninety-eight (1998), you had been a detective
12 approximately six months, isn't that true?

13 A It was the end of nineteen-ninety-seven (1997) is when
14 I became --- very close, yes Sir.

15 Q Okay.

16 The end of nineteen-ninety-seven (1997) you
17 became a detective for Northville. This is March
18 second, nineteen-ninety-eight (1998)?

19 A That's correct.

20 Q So just a few months you were a detective at this
21 point?

22 A Yes Sir.

23 Q So is it a fair statement that this is your first big
24 case?

25 A I would say that's a fair statement, yes Sir.

1 Q And umm --- is it a fair statement that umm --- you
2 never interviewed Christa Kennedy other than at the
3 hospital, correct?

4 A That's incorrect Sir.

5 Q Okay.

6 And when did you interview Christa Kennedy?

7 A I did not interview Christa Kennedy at the hospital.
8 I interviewed Christa Kennedy at Northville Township
9 Police Department.

10 Q And when did you do that?

11 A That was as the investigation went on. I don't know
12 the specific date but it was subsequently after I
13 interviewed Mr. McBurney.

14 Q And when was that date?

15 A I have the records but the date off the top of my
16 head, I can pull them up for you if you'd like, but it
17 was after his interview and statements. I then
18 interviewed his mother-in-law as well.

19 Q Isn't it true you did not interview Christa Kennedy
20 until March thirty-first (31st), nineteen-ninety-eight
21 (1998), isn't that true?

22 A I would need to see the records to fairly give you an
23 answer on that but ---

24 Q (Interposing) Okay.

25 Go ahead and look at your file.

1 A Do you want to provide them to me or ---

2 Q (Interposing) Where's your ---

3 A (Interposing) I can open my file.

4 Q Yeah. Go ahead. I assumed you had your file.

5 THE COURT: Go ahead. That's fine.

6 I do appreciate that you didn't dig into it until
7 someone tells you to. All right, so go ahead.

8 THE WITNESS: Give me one moment please.

9 It is a large file with many records.

10 Q (By Mr. White, continuing) Okay.

11 A One moment Counselor, I do have it in some order here.

12 Q All right.

13 A Can I set this on your desk?

14 THE COURT REPORTER: Sure.

15 THE WITNESS: Counselor, you are correct.

16 I did do interviews on Linda Kennedy and Christa
17 Kennedy on the thirty-first (31st). March thirty-
18 first (31st), nineteen-ninety-eight (1998).

19 Q (By Mr. White, continuing) In fact, they weren't
20 even interviews, were they? You were really just
21 collecting evidence against Steven McBurney, isn't
22 that true?

23 A No Sir. That is not true.

24 Q Now the questions you asked them on that date really
25 had to do with Steven McBurney as a suspect of your

1 investigation, isn't that true?

2 A Well Sir, I'm looking at the first question. It
3 says, 'Was Nicholas ---

4 Q (Interposing) No. I'm asking if it was true or
5 not? Answer my question.

6 A Can you ask it again?

7 Q Isn't it true Officer, that the only reason you asked
8 Linda Kennedy and Christa Kennedy any questions in
9 your con --- your investigation was the only suspect
10 was Steven McBurney?

11 A I was doing this at direction of the Wayne County
12 child abuse Prosecutor.

13 Q 'Yes' or 'No' Sir?

14 A The answer is no. I was told to do an investigation
15 so I did it. You're confusing me with your
16 terminology Sir.

17 Q Okay.

18 Which part --- what is there a word you don't
19 understand?

20 THE COURT: Just let's --- let's just
21 rephrase or go ahead and ask it again.

22 Q **(By Mr. White, continuing)** You had no --- you had at
23 this point on March thirty-first (31st), nineteen-
24 ninety-eight (1998), twenty-nine (29) days after you
25 interviewed Steven McBurney is the first time that you

1 interviewed Christa Kennedy and Linda Kennedy?

2 MS. POPE-STARNES: Objection. Asked and
3 answered.

4 THE COURT: I'll allow it. I'll allow it.

5 THE WITNESS: That is a correct statement,
6 Sir.

7 Q (By Mr. White, continuing) Okay.

8 Now when you went to Steven McBurney's house on
9 March second, nineteen-ninety-eight (1998), you went
10 with a uniformed police officer, correct?

11 A Yes Sir.

12 Q You went at three-thirty (3:30) in the afternoon,
13 right?

14 A Yes Sir.

15 Q Okay.

16 A Approximately.

17 Q And you were there to talk to the parents regarding a
18 suspected abuse case?

19 A That's correct.

20 Q And you talked to the father?

21 A Yes.

22 Q On that day twice?

23 A Yes.

24 Q And yet you didn't talk to the mother until twenty-
25 nine (29) days later?

1 A That's correct. The mother ---

2 Q (Interposing) And the other caregiver, Linda Kennedy
3 the grandmother, until twenty-nine (29) days later,
4 correct?

5 A That's correct.

6 Q Okay.

7 Now we know that when you interviewed Steve at
8 his house on March second at approximately three-
9 thirty (3:30) in the afternoon, that he was answering
10 your questions, correct?

11 A Yes.

12 Q And umm --- wasn't under arrest?

13 A That's correct.

14 Q He was being cooperative with you?

15 A That's correct.

16 Q And that he gave you voluntarily a written statement?

17 A Yes Sir.

18 Q And the written statement was how long into the
19 interview? How long did that take?

20 A The interview was --- was short. We were sitting at
21 the kitchen table. Time is hard for me to give you a
22 fair answer after this amount of time but it was a
23 short interview I did with him. And it was a short
24 written statement. That's the fairest statement I
25 can make to you Sir.

1 Q Okay.

2 And umm --- after he wrote out his statement?

3 A Yes Sir?

4 Q You went over it?

5 A Yes.

6 Q Okay.

7 You went over it with him, correct?

8 A Yep. And he actually signed --- they sign the bottom
9 of the statement form.

10 Q You put a time on it, correct?

11 A Uh --- my understanding, yes.

12 Q Okay.

13 And then you left his house and you went back to
14 the Northville Police Department, correct?

15 A Uh --- yep, subsequently. Yeah.

16 Q Okay.

17 And you gave him a card?

18 A I ---

19 Q (Interposing) A card?

20 A I wouldn't argue that. I probably gave him a card.

21 Q You said, 'Call me if you have anything else to add',
22 correct?

23 A That would be a normal course of an investigator or
24 police officers so I'd say that's a fair statement.

25 Q Okay.

1 And he called later on that evening, correct?

2 A Yes Sir.

3 Q Okay.

4 And when he called you he told you that he had --
5 - he remembered another incident. He told you on the
6 telephone, isn't that true?

7 A It's my understanding that he told me he had something
8 else to tell me. And he might have made reference to
9 another incident. This was ten years ago but he
10 wanted to come see me is what --- what stuck in my
11 mind.

12 Q He told you about another incident which he dropped --
13 - he remembered that he dropped Nicholas?

14 A He told me that he wanted to talk about another
15 incident. I cannot remember the specifics to the
16 conversation because he was going to come see me at
17 the police department. He was the one who wanted to
18 have the additional interview. So I cannot remember
19 after ten years a five minute phone conversation.

20 Q But it is possible that he told you that he had
21 something else to tell you, correct?

22 MS. POPE-STARNES: Objection. Asked and
23 answered Your Honor.

24 THE COURT: The Court sustains that.

25 Q (By Mr. White, continuing) Now when he told you ---

1 when he wrote out his written statement at the
2 apartment, he told you about tripping over the gate
3 with Nicholas, correct?

4 A He made reference to that and then he actually wrote
5 it in his statement. That's kind of where this
6 conversation stemmed from that.

7 Q Okay.

8 Somehow you didn't include it in your police
9 report, did you?

10 A Well the written statement is part of my police
11 report.

12 Q Did you include it in your police report?

13 A The written statement is part of ---

14 MS. POPE-STARNES: (Interposing)
15 Objection. Asked and answered. He has said, 'The
16 written statement is a part of his police report.'

17 THE COURT: Okay.

18 And Officer, you've got to stop talking when the
19 Prosecutor interrupts.

20 THE WITNESS: I'm sorry.

21 MS. POPE-STARNES: Your Honor I apologize.
22 I think I interrupted him in an attempt to get my
23 objection on the record.

24 THE COURT: Okay.

25 Well, it's always the --- it's tough for the

1 witness but it's kind of your job to stop talking
2 whenever someone stands up.

3 Let's move on.

4 Q (By Mr. White, continuing) The narrative portion of
5 your police report, you have a narrative portion?

6 A Yes. The narrative ---

7 Q (Interposing) Did you describe certain things that
8 happened on March second, approximately three-thirty
9 (3:30) in the afternoon at his apartment, correct?

10 A Now you're accurate Counselor. And the narrative
11 does not have that portion ---

12 Q (Interposing) Well wait a minute. Just answer my
13 question.

14 You described things in your narrative report,
15 correct?

16 A There are things that I described in my narrative
17 report that I'm not allowed to speak of to follow the
18 guidelines of this Court. I can speak them if you
19 would like.

20 MR. WHITE: Judge, I ask the witness to
21 quit this.

22 Just answer the question.

23 THE COURT: I got it. I got it.

24 If you can answer it 'Yes' or 'No' just do it
25 that way, if you can.

1 Go ahead and ask it again.

2 Q **(By Mr. White, continuing)** Isn't it true that you
3 wrote out a narrative portion of your police report?

4 A Yes.

5 Q Okay.

6 And isn't it true that the narrative portion
7 included events that occurred in this apartment at
8 three-thirty (3:30) in the afternoon?

9 A Yes.

10 Q And isn't it true that the narrative portion of your
11 police report does not reference Steve's statements to
12 you about drop --- falling over the gate with
13 Nicholas?

14 A The narrative portion, you are correct Sir.

15 Q Thank you.

16 Now when he came into the apartment --- excuse
17 me, came into the department, you were --- you were
18 aware that he was coming in because he called you and
19 told you?

20 A Yes Sir.

21 Q And he told you he was on his way, correct?

22 A Yes Sir.

23 Q And when you received that phone call you went and got
24 some kind of recording device, correct?

25 A No Sir.

1 Q You didn't?

2 A No.

3 Q Didn't have any kind of tape recorder or anything?

4 A No Sir.

5 Q A person who is coming to your department and to be --
6 - to make a, what you believe, to be a possibly
7 incriminating statement and you made no attempt to get
8 any kind of video or audio recording device?

9 A No. At that time in nineteen-ninety-eight (1998) we
10 did not have ---

11 Q (Interposing) That's a 'Yes' or 'No' answer Sir.

12 A No. I did not have that type of equipment.

13 Q In nineteen-ninety-eight (1998)?

14 A I did not have that type of equipment in Northville
15 Township Police Department.

16 Q Absolutely sure of that? Absolutely sure Detective?

17 MS. POPE-STARNES: Objection. Asked and
18 answered.

19 THE COURT: Sustained.

20 Q **(By Mr. White, continuing)** You remember when you
21 testified before Officer in this case?

22 A Several times, yes Sir.

23 Q Okay.

24 Let me direct your attention to Tuesday, June
25 thirtieth (30th), nineteen-ninety-eight (1998).

1 MS. POPE-STARNES: Objection. There is a
2 reciprocal discovery order in this case. I have not
3 been provided with this.

4 MR. WHITE: I'm not using it as evidence.
5 It's for impeachment.

6 THE COURT: I don't know what the question
7 is.

8 MR. WHITE: My question is, 'Do you
9 remember testifying in this case', prior to ---

10 THE COURT: (Interposing) Come on up
11 folks, Counsel.
12 (Whereupon a discussion was held at the Bench out of
13 hearing of the Jury and the Court Reporter.)

14 * * *

15 MS. POPE-STARNES: I'm so sorry.

16 THE COURT: It's okay. It's okay.

17 MR. WHITE: My question was ---

18 THE COURT: (Interposing) I won't say
19 anything for the record about your face being red.

20 MS. POPE-STARNES: Beet red?

21 THE COURT: You're all right. You're all
22 right.

23 Go ahead Mr. White.

24 Q (By Mr. White, continuing) Let me refresh your
25 recollection.

1 My question was, 'On June thirtieth (30th),
2 nineteen-ninety-eight (1998),' line twenty-two (22),
3 page thirty-six (36), 'Knowing that he was there to
4 discuss this incident you ---

5 THE COURT: (Interposing) Hold on.
6 Gotta go ---

7 MR. WHITE: I'm sorry. I'm sorry. Let
8 me start again.

9 THE COURT: Got to go slow.

10 Q (By Mr. White, continuing) Question.

11 'Knowing that he was there to discuss this
12 incident ---

13 MS. POPE-STARNES: (Interposing)
14 Objection.

15 Q (By Mr. White, continuing) you made no pretense ---

16 MS. POPE-STARNES: (Interposing)
17 Objection.

18 THE COURT: Hold on. Hold on Mr. White.

19 Q (By Mr. White, continuing) to try to record ---

20 THE COURT: Hold on.

21 Since it's a reading from something, go ahead.
22 Let me hear the objection first.

23 MS. POPE-STARNES: He said, 'No'. he
24 should be giving him an opportunity to look at this
25 document first.

1 MR. WHITE: I don't have to under Court
2 rules.

3 MS. POPE-STARNES: It would be the Rules of
4 Evidence that would apply to this Your Honor. And I
5 believe that he does.

6 MR. WHITE: With the Rules of Evidence ---

7 THE COURT: (Interposing) Let me hear
8 your question first before you start reading from
9 that. What's the question that you're asking?

10 MR. WHITE: I asked him before, several
11 times, did he make any attempt to record the --- the
12 interview knowing that Steven was coming there to
13 possibly make, what he believed to be, incriminating
14 statements. And his answer was 'No'. Back in
15 nineteen-ninety-eight (1998) he had no recording
16 devices. My question was asked previously as prior
17 testimony.

18 THE COURT: All right. I ---

19 MR. WHITE: (Interposing) I'm going to
20 now read his prior testimony.

21 THE COURT: Before you do so, I'll give him
22 the opportunity --- I respectfully direct you to give
23 him the opportunity to take a look at it Mr. White.
24 Your objection is noted that it's not required under
25 the rules, but I find that it is.

1 MR. WHITE: I will respect the Court's
2 ruling.

3 THE COURT: Thank you.

4 MR. WHITE: I'll approach if I may?

5 THE COURT: Please do. Yes you may.
6 Just read it to yourself.

7 THE WITNESS: Yes, Sir.
8 Just that page Sir?

9 Q (By Mr. White, continuing) No. See if it goes over
10 to the next page.

11 A Okay. Yes Sir.

12 I read it right here, (indicating).

13 Q So when I asked you in nineteen-ninety-eight (1998)
14 whether you tried to make any recording of it, you did
15 try didn't you?

16 A I had a hand-held tape recorder from your testimony,
17 that I said in nineteen-ninety-eight (1998).

18 Q Okay.

19 So you did, right?

20 A Yes.

21 Q We can agree that you made an attempt to try to record
22 this interview, correct?

23 A Yes. From my comments in Court there, yes Sir.

24 Q Okay.

25 And you weren't able to record this isn't that

1 true?

2 A That's true.

3 Q Okay.

4 A From my ---

5 Q (Interposing) You put this recorder supposedly in
6 your pocket but somehow you forgot to put a tape in or
7 have the tape turned over, is that your testimony?

8 A I'm going strictly by what the documents you presented
9 me which were from some Court proceeding that I had
10 been in previously. And ---

11 THE COURT: (Interposing) Let me do it
12 this way if you could. Just take a minute and just
13 kind of digest what you read and see if that refreshes
14 your recollection about the date that this interview
15 took place. See it that just helps you or if that's
16 --- if you're just kind of ---

17 THE WITNESS: (Interposing) Your Honor,
18 I'm going strictly by what the written word is on this
19 document. And there was something about that it had
20 turned off. I would have to see that again and I can
21 tell you that once I see some --- that it turned off
22 during the interview. I thought that's what I had
23 said and you had written in there.

24 Q (By Mr. White, continuing) Well I didn't write it in
25 there.

1 A Excuse me. You are correct Sir.

2 Q Do you have independent recollection of this?

3 A I don't have independent recollection and I'm very
4 sorry.

5 Q Okay.

6 So you could recall that you didn't have one, now
7 that you know that you did, you can't recall, right?

8 MS. POPE-STARNES: Objection. It's
9 argumentative Your Honor.

10 THE COURT: It's a little bit off.
11 Rephrase it.

12 Q **(By Mr. White, continuing)** Sir, I asked you back in
13 nineteen-ninety-eight (1998) if you tried to record
14 something and you responded, 'Yes you did', correct?

15 A (No verbal response.)

16 THE COURT: Which time?

17 At that prior proceeding or today?

18 Q **(By Mr. White, continuing)** No. When I asked him
19 back in nineteen-ninety-eight (1998) whether he tried
20 to record the interview with Steven McBurney at
21 Northville Township Police Department, approximately
22 seven-thirty (7:30) at night, you indicated 'Yes, you
23 did try to record', correct?

24 A Yes, per that document.

25 Q Okay.

1 And that the transcript of your prior testimony
2 indicates that for some reason the recording didn't
3 take place, correct?

4 A That's correct.

5 Q And that that the tape was somehow not sitting in the
6 tape recorder right, correct?

7 A I didn't see that in the written but if you show it to
8 me I'll gladly review it.

9 MR. WHITE: If I may approach Judge?

10 THE COURT: You may.

11 THE WITNESS: Do you know the line
12 Counselor?

13 Q **(By Mr. White, continuing)** Just, just read the page.
14 And I think it might go over to the next page so if
15 you want to just ---

16 A (Interposing) Okay.

17 Q So when I go back you need to see it all.

18 A The highlighting on this one, the second page?

19 Q Okay.

20 I don't know. That's my highlighting so if
21 there's anything else you think of interest just go
22 ahead and read it.

23 A Well Sir, it's been ten years I would need to read
24 this whole document to tell you fairly about it. I
25 mean, if you tell me the number, I will gladly answer

1 the question.

2 THE COURT: Where --- do you know where the
3 information is located?

4 THE WITNESS: I've read two-and-a-half
5 pages.

6 THE COURT: Go ahead.

7 THE WITNESS: This is a large document.

8 MR. WHITE: He needs to read it because I'm
9 going to ask him some more questions.

10 THE COURT: How about we do this?

11 Can you --- all right. Do you have a bit more
12 to go on other matters with this witness?

13 MR. WHITE: But they're all going to ---

14 THE COURT: (Interposing) Okay. All
15 right.

16 MR. WHITE: So maybe he can, you know,
17 because we're going to be back and forth like this
18 forever. So maybe we can take a break. He can read
19 it and then come back.

20 THE COURT: All right. We'll go a little
21 bit earlier than we normally would but we'll do it
22 that way. I think it might be quicker if we go this
23 way.

24 MR. WHITE: I do too.

25 THE COURT: We'll take a short recess.

1 Ladies and Gentlemen, please don't talk about the
2 case, okay?

3 All rise for the Jury.

4 You can start working your way out there.
5 Hopefully Jeff will be out there waiting for you.
6 (Whereupon the Jury was returned to the Jury room at
7 3:00pm.)

8 * * *

9 THE COURT: The record will reflect that
10 the Jury is excused.

11 Barb are you all right?

12 Do you want to bring him down for a break while
13 you go do this, all right?

14 A VOICE: Sure. Thank you.

15 THE COURT: You know, let us call you
16 because there's a couple of them are down there on
17 break.

18 (Whereupon a recess was had.)

19 * * *

20 THE CLERK: The Court calls People versus
21 McBurney, case number 07 214651 FC.

22 THE COURT: Ms. Pope-Starnes, Mr. White
23 your appearances are noted for the record.

24 Mr. McBurney is back.

25 MS. POPE-STARNES: Your Honor, during the

1 break our investigator brought the disc from the
2 University of Michigan Hospital. There's three of
3 them. They've actually included more than what we
4 needed but what was needed is in here.

5 THE COURT: Okay.

6 MS. POPE-STARNES: So we've agreed that
7 we're going to include them with all the other written
8 medical records in People's Exhibit 1.

9 THE COURT: Okay.

10 MR. WHITE: Agreed.

11 THE COURT: Okay. Very well.

12 So now Exhibit 1 is a complete set of the
13 documents and information.

14 MS. POPE-STARNES: Yes.

15 The issue then is the line that ---

16 THE COURT: (Interposing) Oh.

17 MS. POPE-STARNES: (Continuing) the two
18 words were struck from that Defense Counsel was not
19 satisfied with how the line read.

20 THE COURT: Can you guys work on that?
21 And if I've got to make a decision on it I will but it
22 seems like something we could ---

23 MS. POPE-STARNES: (Interposing) Yeah.
24 We haven't addressed it yet.

25 THE COURT: Okay. Very well.

1 MR. WHITE: Yes. We'll work on it.

2 THE COURT: All right.

3 And we'll bring in the Jury I think. Be right
4 there. Yeah, I left my file back there too.

5 Go ahead, bring them in Jeff.

6 THE CLERK: Okay.

7 Please rise for the Jury.

8 (Whereupon the Jury was returned to the courtroom.)

9 THE COURT: Good afternoon everyone.
10 Thank you.

11 The record will reflect that the Jury is back.
12 The case has been called. Counsels' names have been
13 noted and the witness is back on the stand.

14 You are reminded Sir you're still under oath and
15 required to testify truthfully and honestly.

16 You may all be seated.

17 Mr. White, you may proceed.

18 **WHEREUPON SERGEANT PAUL SUMNER HAVING BEEN PREVIOUSLY**
19 **SWORN TO TELL THE TRUTH, THE WHOLE TRUTH AND NOTHING**
20 **BUT THE TRUTH WAS EXAMINED AS FOLLOWS:**

21 **CONTINUED CROSS-EXAMINATION**

22 **BY MR. WHITE:**

23 **Q** Now Detective Sumner, you took a break. I gave you
24 my copy of the transcript which was highlighted. And
25 you had an opportunity to review some of it, isn't

1 that true?

2 A I reviewed a portion of it, yes.

3 Q Okay.

4 And does that refresh your recollection to some
5 degree about your prior testimony?

6 A Strictly from the written word on these documents.

7 Q And uh --- does it refresh your recollection about you
8 having a tape recorder on March second, nineteen-
9 ninety-eight (1998) at the Northville Township Police
10 Department?

11 A Yes.

12 Q And, in fact, you did have a tape recorder?

13 A Per my statement here, yes.

14 Q Okay.

15 And you did put it in your front pocket?

16 A Can you tell me what page so I can go along with you
17 Sir?

18 Q Uh --- first of all let me ask you this.

19 Just tell me if you can remember okay?

20 A I can't remember that Sir. I'm trying to be honest
21 with you. This is a lot of paper to remember in
22 twenty (20) minutes.

23 Q And the reason you had a tape recorder was to tape Mr.
24 McBurney's statement, correct?

25 A I don't remember if I had a tape recorder without

1 reviewing this document.

2 THE COURT: Can you think of any other
3 reason why you'd have it other than that reason?
4 Just ---

5 THE WITNESS: (Interposing) I would have
6 a tape recorder if I was going to deal with a person
7 that I might have it for a statement. I might not.
8 It was not a requirement.

9 THE COURT: Okay.

10 THE WITNESS: But specifically I can't tell
11 you.

12 THE COURT: You don't remember that's fine.

13 MS. POPE-STARNES: Your Honor, if I may?

14 THE COURT: Yes?

15 MS. POPE-STARNES: Excuse me. I think
16 what he's indicating is that he does not have an
17 independent recollection.

18 THE COURT: I get --- and I think that's --
19 - go ahead, Mr. White.

20 MR. WHITE: Well then all he's got to do is
21 say that.

22 THE COURT: Yep.

23 I know what you're saying. You're looking at
24 the notes and you're not disputing it. But he's
25 asking of you to make a recollection about the actual

1 time that you interviewed Mr. McBurney. And if you
2 don't remember, you don't remember. That's all.

3 THE WITNESS: Your Honor, just one
4 statement is that I need to know if we're referring to
5 this or for referring to my independent memory or this
6 is ---

7 THE COURT: (Interposing) Your
8 independent memory.

9 THE WITNESS: Okay. But each time we keep
10 flipping back and forth to these documents.

11 THE COURT: Fair enough. Okay.

12 Just characterize accordingly each question, Mr.
13 White.

14 MR. WHITE: Okay.

15 Q (By Mr. White, continuing) So uh --- you don't
16 remember having the tape recorder but your review of
17 the transcript helped you remember, right? Is that a
18 fair statement?

19 A Yes Sir.

20 Q Okay.

21 And the reason why you had a tape recorder would
22 be to tape his statement, correct?

23 A That --- that would be a reason, yes Sir.

24 Q A reason.

25 And a reason why you as a police officer would

1 tape someone's statement would be to make sure that
2 you have an accurate statement?

3 A That would be a reason Sir.

4 Q Okay.

5 And that if you needed to use it at a later point
6 in time there would be no dispute as to its
7 completeness and its accuracy, is that a fair
8 statement?

9 A That's a fair statement also.

10 Q Okay.

11 And even possible use in Court at some point,
12 correct?

13 A Yes Sir.

14 Q So there's no dispute as to what you thought he heard
15 --- you thought he said and what he said, correct?

16 A That's correct.

17 Q So that would be the best evidence of a person's
18 statement, it being recorded in some kind of
19 electronic means, by some electronic means, true?

20 A That's a judgment question Sir but it would be --- it
21 would assist us.

22 Q Okay.

23 And certainly now, let's say ten years later,
24 that had you recorded it you'd be able to just listen
25 to the recording, true?

1 A That's true.

2 Q Okay.

3 And the reason why the tape recorder didn't work
4 is because you didn't turn the tape over.

5 First of all, let me ask you this Detective.

6 Do you remember that?

7 A No.

8 Q Okay.

9 And if I could ask you to look at page thirty-
10 seven (37), line seventeen (17).

11 A Page thirty-seven (37), line sixteen (16), yes Sir.

12 Q Okay.

13 Does that refresh your recollection?

14 A Of what I testified to, yes Sir.

15 Q And so is that a true statement that you --- that the
16 tape recorder did not work because you didn't turn the
17 tape over?

18 A I testified that, 'I believe I didn't turn the tape
19 over.'

20 Q Okay.

21 So but you had in your pocket the intent of
22 taping --- put it in there. Knew Steve was coming.
23 Going to question him. Didn't turn the tape over.
24 You only got parts of the recording, isn't that true?

25 A That's correct.

1 Q Okay.

2 And you didn't discover that until after Steve
3 left, isn't that true?

4 A That's true.

5 Q Okay.

6 So when you're taping someone and with a tape
7 recorder uh --- there would be no reason to take notes
8 at that point, isn't that true?

9 A No. I took notes. I do remember that and from
10 reading this.

11 Q You do remember by reading the highlighted portion of
12 my transcript?

13 A Yes. That's true.

14 Q So you took notes even though you thought at the time
15 that you were tape recording him?

16 A That's correct.

17 Q Okay.

18 Now when he came in the off --- when he came in
19 the --- the police department, umm --- you said there
20 --- you took him in an office to interview him,
21 correct?

22 A Yes Sir.

23 Q Okay.

24 And he wasn't crying at that point?

25 A No.

1 Q He was upset?

2 A He was upset. There was ---

3 Q (Interposing) Agitated?

4 A He was upset.

5 Q Okay.

6 And umm --- indicated to you on the telephone he
7 had something to tell you about Nicholas, correct?

8 A Uh --- from once again, from here (indicating), I did
9 make a statement what he told me on the telephone.
10 And I have to read that from here if you would like
11 it?

12 Q No. That's okay.

13 We agree that he called you?

14 A Yes Sir.

15 Q We agree that he called you to tell you that he wanted
16 to come in and talk about Nicholas?

17 A Yes Sir.

18 Q Okay.

19 We agree to that. We don't agree whether he
20 told you that he was coming in to tell you that he
21 remembered another incident in which he dropped
22 Nicholas, okay?

23 MS. POPE-STARNES: Objection Your Honor.

24 He testified before the break that he didn't remember
25 what was said in the phone call. He's just now

1 testified that he sees what it says in the transcript
2 about what was in the phone call. But he's already
3 earlier testified to that. So this question is a
4 mischaracterization of the Sergeant's testimony.

5 THE COURT: Let me ask you Sir.

6 Sir, let's go back in time not to this transcript
7 but to the phone call, okay?

8 We're both back in time.

9 THE WITNESS: Okay.

10 THE COURT: Not to be trite but back in
11 time there.

12 THE WITNESS: Yes Sir.

13 THE COURT: Can you remember the
14 conversation back and forth between you and the
15 Defendant?

16 THE WITNESS: Other than he wanted to come
17 in, I cannot recall.

18 THE COURT: Okay. Other than that, okay.
19 Thank you.

20 Go ahead Mr. White.

21 Q (By Mr. White, continuing) How long were you in the
22 interview room with Mr. McBurney before Sergeant Worth
23 was brought in?

24 A I have no independent memory how long I was in there.
25 He was in and out several times during the interview

1 if I recall.

2 Q And isn't it true that Steven told you in that intrude
3 --- interview room that he had dropped Nicholas
4 approximately at the age of one-and-a-half months?

5 A Yes.

6 Q Okay.

7 That he had dropped him from his lap onto the
8 carpeted concrete floor of the apartment that you had
9 went to?

10 A That's a true statement.

11 Q Okay.

12 And that he told you that, 'It was an accident',
13 isn't that true?

14 A That's a true statement.

15 Q Okay.

16 And he told you that he was bouncing Nicholas on
17 his knee and that as he was bouncing him he dropped
18 him, true statement?

19 A When he fell on the floor, I --- if memory serves me,
20 that's true Sir.

21 Q Okay.

22 And he told you that on March, excuse me,
23 February twenty-seventh (27th), excuse me, the twenty-
24 second (22nd), three days or four days before March
25 second, the day you were interviewing him, during the

1 --- right before the nine-one-one (911) call, he told
2 you that Nicholas was fussy that day?

3 A That's correct.

4 Q Okay.

5 He told you that he tried to give Nicholas a
6 bottle?

7 A That's correct.

8 Q That Nicholas was taking the bottle and not taking the
9 bottle, correct?

10 A That's correct.

11 Q Okay.

12 And that he had Nicholas on his hip?

13 A That's correct.

14 Q And he was bouncing Nicholas, correct?

15 A And shaking.

16 Q Okay.

17 Did he say he was bouncing Nicholas?

18 A Yes Sir, he did.

19 Q And he said he was bouncing Nicholas and he was
20 bouncing him harder than Christa normally did?

21 A He made reference to that, yes Sir.

22 Q Okay.

23 Now you say that he said, 'Shaking', isn't that
24 true?

25 A Yes Sir.

1 Q Okay.

2 But we agree Officer that his written statement
3 says nothing about shaking, isn't that true?

4 A That's correct.

5 Q Okay.

6 And his written statement was prepared while you
7 were standing there, correct?

8 A I can't recall if I stepped out while he was writing
9 it but I might have been in there. Can't recall that
10 Sir.

11 Q But you certainly had the opportunity to review his
12 written statement and ---

13 A (Interposing) Yes Sir, I did.

14 Q (Continuing) the conclusion?

15 A Yes Sir, I did.

16 Q Okay.

17 And you looked at it and then you told him to
18 sign it, isn't that true?

19 A Yes. I --- that would have been my normal procedure.

20 Q Okay.

21 Put a time on it and a date on it?

22 A I might have put the time on but --- but the time was
23 put on it, yes Sir.

24 Q And put a date on it?

25 A Yes Sir.

1 Q And that was all done under your direction, your
2 telling him what to do, isn't that true?

3 A With the exception of the written statement portion
4 but the date and times, if I wrote them or he wrote
5 them on the top of the statement form, yes. I would
6 have either told him to or I would have put them in.

7 Q So then we can agree then Officer that you must have
8 noticed on March second, nineteen-ninety-eight (1998)
9 that there was no reference to shaking in his written
10 statement?

11 A No. I had the statement that he provided to me and I
12 used it.

13 Q I don't know if you understood the question. And I
14 don't mean to cut you off, but, you must have noticed
15 on March second, nineteen-ninety-eight (1998), after
16 completing the written statement, and we put a time on
17 it and we put a date on it, there was no reference to
18 shaking in that written statement?

19 A No, I did not notice that.

20 Q Okay.

21 You did --- you had to prepare your police report
22 at that time right?

23 A No. On the interview days, no.

24 Q Okay.

25 So you prepared your police report sometime

1 thereafter, right?

2 A Yes Sir.

3 Q After the completion of both --- both his written
4 statements?

5 A Yes Sir.

6 Q Okay.

7 You also testified today that he indicated that -
8 -- Steve indicated that he knew that his shaking and
9 bouncing caused the injuries to Nicholas, is that your
10 testimony today?

11 A Slightly different but I think that it's his actions
12 caused the injury or something like that.

13 Q His actions caused the injury?

14 A Yes Sir. If I remember correctly.

15 Q We can agree that that was not --- that's not in his
16 written statement either is it?

17 A I'd have to look at the statement. There's something
18 referenced that.

19 Q All right.

20 Look it up.

21 A Uh --- they've been placed in the Exhibit Sir.

22 Fine.

23 THE COURT: Somebody have it there?

24 MS. POPE-STARNES: It's right here.

25 THE COURT: All right.

1 If you just pass it up to him Ms. Pope-Starnes or
2 Mr. White?

3 MS. POPE-STARNES: May I approach Your
4 Honor?

5 THE COURT: Sure.

6 THE WITNESS: Okay Counselor.

7 **Q (By Mr. White, continuing)** Isn't that true that the
8 statement that he bounced him, that the way his
9 actions, excuse me, let me rephrase that, that his
10 actions caused the injuries to Nicholas, that
11 statement is not there either, is it?

12 **A**There is a statement here that ---

13 **Q**(Interposing) Where is it?

14 **A**(Continuing) exact terminology is not there if that
15 answers your question.

16 **Q**Okay.

17 That caused the injuries to Nicholas, that's not
18 there either, is it?

19 **A**He does not say, 'Caused.' He uses different
20 terminology.

21 **Q**He doesn't say, 'Caused the injuries to Nicholas'?

22 **A**No. It says different terminology.

23 **Q**Just answer the question.

24 **A**Okay. No.

25 **Q**Okay.

1 And did you notice that Officer on March second,
2 nineteen-ninety-eight (1998) at the Northville
3 Township Police Department?

4 A No.

5 Q That wasn't in there either?

6 A No. He used different terminology.

7 Q Well let me ask you and just answer the question.

8 Did you notice it on that day?

9 A Not that terminology, no.

10 Q Okay.

11 Now the tarm --- terminology that you used is not
12 in that written statement, right?

13 A The terminology that he wrote is what he wrote Sir.
14 You're kind of --- I'm confused.

15 THE COURT: We got it.

16 MR. WHITE: Okay. Thank you.

17 Q **(By Mr. White, continuing)** The last sentence of that
18 statement can you read that?

19 A Yes Sir, I did.

20 Q Just read it to yourself.

21 A Got it.

22 Q You stood over him that night and you told him, 'You
23 better write something about the injuries or I'm going
24 to arrest you', isn't that true?

25 MS. POPE-STARNES: Objection. That is not

1 the testimony that this officer has given about what
2 happened.

3 THE COURT: As to the form of the question,
4 Mr. White. The 'Stood over him', I don't know, I
5 don't remember that.

6 MS. POPE-STARNES: And threatened to arrest
7 him. It's a complete mischaracterization of the
8 testimony and it's argumentative.

9 MR. WHITE: Judge, Judge, is this cross-
10 examination?

11 THE COURT: Go ahead. Just rephrase. Go
12 ahead.

13 Q (By Mr. White, continuing) Uh --- you stood over him
14 that night and you told him if he didn't complete
15 something about the injuries, that you would arrest
16 him, isn't that true?

17 A No that's not correct.

18 Q You didn't swear at him that night?

19 A I don't recall if we swore back and forth or not Sir.

20 Q Sergeant Worth didn't come in the room and start
21 yelling?

22 A I --- Sergeant Worth came in the room and yelled at
23 me.

24 Q In fact, he came in the room and started yelling at
25 Steven and hit the table so hard it knocked over the

1 pop, correct?

2 A The pop fell over but the yelling was because I was
3 taking up that office and on overtime. I can
4 remember that part.

5 Q So he didn't come in the room, start yelling at Steve,
6 use profanity, hit the table so hard that it knocked
7 over the pop, yelling at Steve, not you?

8 MS. POPE-STARNES: Objection. Asked and
9 answered.

10 THE COURT: Just noted. Go ahead and just
11 answer it Sir.

12 THE WITNESS: He was yelling at me.

13 Q **(By Mr. White, continuing)** He was yelling at you in
14 front of Steven?

15 A That's fair. That's true.

16 Q If you look on page nine of the second day of the
17 transcript, July second, nineteen-ninety-eight (1998),
18 the bottom.

19 A Is that after what the previous question or ---

20 Q (Interposing) July second, nineteen-ninety-eight
21 (1998), which is the second part of the transcript.

22 A Second part of the transcript. Do you have a page
23 Sir?

24 Q Page nine.

25 A I believe I have it.

1 Q Okay.

2 Why don't you take a look at it?

3 Does that refresh your recollection?

4 A Yes Sir.

5 Q In fact, Sergeant Worth wasn't yelling at you was he?

6 A No. He did yell at me also about the overtime. I
7 remember that part like it was yesterday.

8 Q Okay.

9 So you remember that part?

10 A Yeah.

11 Q Okay.

12 But we now remember the other part too? He was
13 also yelling at Steve wasn't he?

14 A From what I testified here, I --- I --- he made some
15 comments.

16 Q Sergeant Worth said, 'I know you didn't take your son
17 and drop him like this (indicating) on the table', and
18 that's the loudest. He smacked his hand on the table
19 and the pop can fell over. We picked up the pop and
20 that was it?

21 A Yes.

22 Q Okay.

23 Now how many pages of notes did you take that
24 evening?

25 A I --- I don't recall now.

1 Q Okay.

2 And when you discovered your tape recorder was
3 turned off after the interview was over and you had
4 not taped anything other than an initial beginning,
5 you prepared your police report, correct?

6 A Yes Sir.

7 Q Okay.

8 And your police report has a narrative part, it
9 has a factual part about addresses, names, things like
10 that?

11 A Yes Sir.

12 Q Okay.

13 You had Steve's written statement, both of them,
14 at that time when you were preparing your narrative
15 report, isn't that true?

16 A Yes Sir.

17 Q Okay.

18 Did you make any further contact with Steve to
19 try to get any further information?

20 A There were other points that I had contact with him
21 but I --- I don't believe I interviewed him anymore on
22 that.

23 Q Thank you very much.

24 MR. WHITE: Nothing further.

25 THE COURT: Ms. Pope-Starnes.

REDIRECT EXAMINATION

BY MS. POPE-STARNES:

Q Sergeant Sumner?

A Yes Ma'am?

Q Since March of nineteen-ninety-eight (1998),
approximately how many cases have you handled?

A I couldn't fathom an answer on how many cases I've
been involved in and how many interviews I've done.

Q Investigations, more than a hundred (100)?

A Many more than a hundred (100).

Q More than a thousand (1000)?

A Many more than a thousand (1000).

Q Do you have any idea many interviews you've conducted
since then?

A I --- no. I do interviews on a nightly basis.

Q Since nineteen-ninety-eight (1998) have you done other
interviews with the person who back in nineteen-
ninety-eight (1998) was Sergeant Worth?

A Uh --- a portion of that time. He's not a sergeant
anymore but yes.

Q Do you have independent recollection of all the
investigations and interviews that you do?

A No.

Q Okay.

As a part of the course of business do you write

1 a police report?

2 A Yes.

3 Q Okay.

4 And when you don't have an independent reelection
5 --- recollection, do you use that police report?

6 A Yes. I have to refer to my --- my document.

7 Q This transcript that you were presented with today,
8 had you ever seen it since that testimony in nineteen-
9 ninety-eight (1998)?

10 A This document here (indicating), the only time I've
11 seen it is the fifteen (15) minutes I had to look at
12 it.

13 Q Did you use the words bouncing and shaking in your
14 written narrative police report?

15 A In the police report, yes Ma'am.

16 Q How about the words umm --- about actions causing
17 injury to his son? Did you use those in your police
18 report?

19 A I believe that terminology is in my police report.

20 Q Now I want to ask you a question about the interview
21 at the police station. And let me know if you
22 remember or not.

23 The questions that Counsel was just asking you
24 about Sergeant Worth and hitting the table. Do you
25 recall whether that was part of a demonstration or

1 that was done out of like temper or anger?

2 A Umm --- after reading this, I do recall that the pop
3 was --- actually fell over. And I believe at the
4 time he was mad about --- about me and overtime. And
5 then from reading this he did make a comment to him
6 but I can't remember the specifics. You know, I just
7 remember that I was getting yelled at.

8 Q At the end of the evening did the Defendant walk out
9 of the door of the police station?

10 A Yes. I --- I told him that I would complete some
11 additional paperwork, send it to another jurisdiction,
12 and he left.

13 Q Umm --- in nineteen-ninety-eight (1998), did your
14 department have a policy that required you to record
15 interviews?

16 A No it does not. Did not at that time. Does not
17 today.

18 Q And uh --- if you know, in nineteen-ninety-eight
19 (1998) was there any law that required you to record
20 interviews?

21 A Nineteen-ninety-eight (1998) there was no law. And
22 presently today, in Michigan, there is no law.

23 Q Have you had other cases where you've asked people to
24 write out statements after you've conducted an oral
25 interview with them?

1 A Numerous times.

2 Q In the course of your experience as a police officer,
3 is it unusual for a person's details in a written
4 statement --- statement to be different from what
5 they've told you in an oral interview?

6 A They are often different.

7 Q If you recall, when you interviewed the Defendant at
8 the police station did you tell him what to write in
9 his statement?

10 A No. I don't do that.

11 Q Did you tell him what to write in his statement that
12 he made to you at the apartment?

13 A No.

14 Q Thank you.

15 MS. POPE-STARNES: I have no other
16 questions for this witness.

17 THE COURT: Mr. White?

18 **REXCROSS-EXAMINATION**

19 **BY MR. WHITE:**

20 Q Do you remember that independently Detective that you
21 didn't tell Steve or is this just your usual policy?

22 A I know I didn't tell him because I've never told
23 anyone what to write in a statement. And I know I
24 didn't.

25 Q Now in all your interviews you never told anybody one

1 thing to put in a written statement?

2 A Other than if they want prosecution, that's it for
3 domestic violence cases.

4 Q Okay.

5 MR. WHITE: I have nothing further.

6 THE COURT: Thank you.

7 Thanks Sergeant. You're all set. Thank you.
8 You may be excused.

9 MS. POPE-STARNES: May this witness be
10 excused Your Honor?

11 THE COURT: Yes. Yeah.

12 MR. WHITE: No objection.

13 THE COURT: Okay. Thank you.

14 MS. POPE-STARNES: Your Honor, the People
15 would call Doctor Leena Dev.

16 THE COURT: Ma'am, please raise your right
17 hand, face my clerk and be sworn in.

18 THE CLERK: **Do you swear that the testimony**
19 **you are about to give will be the truth, so help you**
20 **God?**

21 THE WITNESS: **I do.**

22 THE COURT: Ms. Pope-Starnes, you may
23 proceed.

24 MS. POPE-STARNES: May I have just a moment
25 Your Honor?

1 THE COURT: Okay.
2 (Whereupon a brief delay was had.)
3

4 * * *

5 DOCTOR L E E N A D E V
6 WAS THEREUPON CALLED AS A WITNESS HEREIN, AND AFTER
7 HAVING BEEN FIRST DULY SWORN TO TELL THE TRUTH, THE
8 WHOLE TRUTH, AND NOTHING BUT THE TRUTH WAS EXAMINED
9 AND TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MS. POPE-STARNES:

12 Q Doctor would you please state your name and spell your
13 last name for the record?

14 THE COURT: Would you please spell
15 whichever ones are going to be hard to spell?

16 THE WITNESS: Do I need a microphone?

17 THE COURT: No. Just --- you need to
18 speak up really loud.

19 THE WITNESS: Okay.

20 THE COURT: And actually face that
21 (indicating) way.

22 THE WITNESS: Okay.

23 L E E N A last name D E V.

24 THE COURT REPORTER: Thank you.

25 THE COURT: D E V. Actually what I'll ask

1 you to do is just talk straight out so that way
2 everybody on this side can see and hopefully on the
3 other side too, okay? Thank you.

4 **Q (By Ms. Pope-Starnes, continuing)** Are you employed
5 Ma'am?

6 A Yes.

7 Q How are you employed?

8 A I'm the medical director of the child protection team
9 at the University of Michigan.

10 Q Are you a medical doctor?

11 A Yes.

12 Q Where did you --- can you tell the Jury please where
13 did you attend medical school?

14 A I received my medical degree at the University of
15 North Carolina, Chapel Hill.

16 Q And what year did you receive that degree?

17 A In nineteen-ninety-seven (1997).

18 Q Did you complete a residency program?

19 A Yes I did.

20 Q And where did you do that?

21 A I completed my pediatric residency at C.S. Mott
22 Children's Hospital in Ann Arbor in the year two
23 thousand (2000).

24 Q Following the completion of your residency what work
25 did you do next?

1 A I practiced as a general pediatrician for four years.
2 And after that I joined the child protection team in
3 February of two thousand and five (2005).

4 Q And where did you work as a general pediatrician?

5 A As a general pediatrician I worked in three places.
6 The first place was Oakwood Hospital in Dearborn,
7 Michigan. And then Orchard Pediatrics in West
8 Bloomfield, Michigan. And then two years at
9 Thundermist Health Center in Woonsocket, Rhode Island.

10 Q Now Doctor Dev, can you tell the Jury please what
11 states you've held licenses to practice medicine in?

12 A I've held a license to practice medicine in Michigan,
13 Rhode Island and North Carolina.

14 Q And do you still currently hold all of those licenses?

15 A No, I do not.

16 Q Okay.

17 Which states do you still currently hold a
18 license in?

19 A Michigan.

20 Q And why do you no longer have licenses in the other
21 states?

22 A I am not employed there and don't plan to be employed
23 there.

24 Q What, if any, hospitals have you been affiliated with
25 besides the University of Michigan Hospital?

1 A Umm --- I've been affiliated with Oakwood Hospital and
2 Health Assistance in Dearborn, Michigan. With
3 Beaumont Medical Center in Royal Oak and Troy. And
4 also with Landmark Medical Center in Woonsocket, Rhode
5 Island.

6 Q Are you board certified?

7 A Yes.

8 Q In what area?

9 A Pediatrics.

10 Q And how long have you held that board certification?

11 A Since two thousand and one (2001).

12 Q Now Doctor Dev is there a board certification in the
13 area of child abuse?

14 A No.

15 Q Is there testing being developed for that?

16 A Yes.

17 Q And have you applied to be eligible for that testing?

18 A There is no application at this time because there's
19 no actual test.

20 Q Okay.

21 And uh --- when is that scheduled to begin, if
22 you know?

23 A In twenty-thirteen (2013).

24 Q Have you done any teaching?

25 A Yes.

1 Q Where?

2 A At Oakwood Hospital and at the University of Michigan.

3 Q Do you do any teaching outside of the hospital
4 setting?

5 A Yes, I do.

6 Q What type of teaching?

7 A I teach the medical findings in child abuse to
8 protective service workers, to law enforcement and in
9 the past I've also done training for prosecuting
10 attorneys and attorney generals, all in Michigan.

11 Q Approximately how many children do you see a year?

12 A Uh --- approximately seventy-five (75) patients a
13 year, give or take.

14 Q And as the director of the child protection team what
15 are your duties?

16 A As director of the child protection team my duties are
17 to assist medical teams when there's cases of possible
18 concerns for abuse. To help them figure out are
19 there other tests that need to be done to rule in or
20 rule out abuse. I consult on cases that are
21 inpatient in the hospital when there's concern for
22 suspicious bruises, burns, fractures or head trauma.
23 And then also on an outpatient basis for bruises,
24 burns and sexual abuse.

25 Q Okay.

1 Do you also consult on cases involving something
2 called Munchausen by proxy?

3 A Yes I do.

4 MS. POPE-STARNES: May I approach Your
5 Honor?

6 Please let the record reflect that I'm showing
7 Counsel what is marked as People's Proposed Exhibit 9.
8 A copy was provided to Counsel last week.

9 MR. WHITE: Is this page supposed to be
10 blank? Isn't there something on the back of page
11 two?

12 MS. POPE-STARNES: May I approach the
13 witness Your Honor?

14 THE COURT: You may.

15 Q **(By Ms. Pope-Starnes, continuing)** Doctor Dev, I'm
16 showing you what has been marked as People's Proposed
17 Exhibit 9 and ask you if you recognize that?

18 A Yes.

19 Q And what is that?

20 A That is my curriculum vitae.

21 Q And is this a current curriculum vitae?

22 A Yes.

23 Q And is this a fair and accurate document?

24 A Yes.

25 MS. POPE-STARNES: I would move for the

1 admission of People's Exhibit --- Proposed Exhibit 9
2 in People's Exhibit Numbers.

3 THE COURT: Any objection?

4 MR. WHITE: No objection.

5 THE COURT: So admitted.

6 Q (By Ms. Pope-Starnes, continuing) Doctor Dev, have
7 you been qualified to testify as an expert in
8 courtrooms before?

9 A Yes, I have.

10 Q Can you tell the Court please what Courts you've
11 testified in before?

12 A I've testified in Wayne County, Washtenaw County,
13 Oakland County, Monroe County, Jackson County, umm ---
14 Livingston County and Ingham County and Stanton,
15 Michigan. I'm not sure what county that is.

16 Q Okay.

17 And do you know approximately how many times
18 you've been qualified as an expert?

19 A I've been qualified upwards of twenty (20), twenty-
20 five (25) times as an expert.

21 Q And when you've previously been qualified as an
22 expert, in what areas have you been qualified as an
23 expert?

24 A Pediatrics and child abuse pediatrics.

25 MS. POPE-STARNES: Your Honor, I would ask

1 that this witness be qualified as an expert in
2 pediatrics and child abuse pediatrics.

3 THE COURT: Any objection?

4 MR. WHITE: No objection.

5 THE COURT: So qualified.

6 **Q (By Ms. Pope-Starnes, continuing)** Now Doctor Dev, if
7 I could direct your attention back to December first
8 of two thousand and six (2006), were you asked to
9 consult involving a child by the name of Madison
10 McBurney?

11 **A** Yes, I was.

12 **Q** And can you tell the Jury please when you're asked to
13 consult on a case, what is it that you do?

14 **A** When I'm asked to consult on a case I review whatever
15 records --- I first ask why I'm being called to
16 consult which is usually because there's a suspicion
17 of abuse or neglect. And then I review whatever
18 medical records there are on our electronic medical
19 records system at the University of Michigan. And
20 then after that I will go in and see the patient. I
21 will, depending on whatever order I can do things in,
22 I'll talk to the medical doctors that are present that
23 are taking care of the child. Talk to the nurse.
24 Talk to parents and examine the child. Talk to the
25 child if that's a possibility.

1 Q Umm --- did you, in Madison's case, did you review
2 information from your medical records system, I
3 believe called CareWeb?

4 A Yes.

5 Q Okay.

6 And did there come a time when you had an
7 opportunity to speak with Madison's parents?

8 A Yes.

9 Q When was that?

10 A I spoke with her parents on December first, two
11 thousand and six (2006).

12 Q And did you obtain a history from them?

13 A Yes, I did.

14 Q Now what is the reason that you request a history from
15 parents or family members?

16 A The reason that I request a history is because to me
17 that is a thorough examination, is to get a history
18 from the parents. To get it, collect it on my own,
19 so that I know what information was given to me
20 instead of solely relying on what other people have
21 obtained.

22 Q Okay.

23 Can you tell the Jury what history you were given
24 by Madison's parents?

25 A The history that I was given by her parents was that

1 she umm --- on the afternoon, on November thirtieth
2 (30th), she had done well all day and then was put
3 down for a nap at uh --- she was put down for a nap.
4 And then mother had gone to work and father had woken
5 her up sometime between seven o'clock (7:00) and
6 seven-fifteen (7:15) to give her a bottle. He placed
7 her in a bouncy chair. She was given the bottle.
8 She drank two ounces of the bottle and then threw the
9 bottle. And he then took her to change her diaper.
10 He changed her diaper. He put on her brace. He put
11 on her pajamas and then set her down on the floor.
12 At which point, I did not actually get the time lapse
13 in-between, but he heard a gurgling noise. He looked
14 over at her and found that she was stiff and she had
15 her arch --- her back arched. And so then he called
16 nine-one-one (911). They gave him some instructions.
17 EMS arrived. They had some difficulty with
18 intubating her and so they provided --- they provided
19 ventilation with a bag and a mask. And umm ---
20 brought her to the University of Michigan.

21 Q When you obtained this history from the parents did
22 they indicate whether or not there were any other
23 caretakers of Madison besides them?

24 A They said that umm --- mother and father were the
25 primary caregivers. They did occasionally use

1 babysitters who were well known to the family.

2 Q Were you able on that same day to conduct a physical
3 examination of Madison?

4 A Yes.

5 Q Where was she when you saw her?

6 A She was in the pediatric ICU, intensive care unit.

7 Q Can you describe Madison's appearance when you saw her
8 that day?

9 A Can I look at my notes?

10 Q Would your notes refresh your memory?

11 A Yes, they would.

12 Q Yes.

13 Just go ahead and read them silently to yourself.
14 And when you've had a chance to do that, set them
15 aside and let me know.

16 Does that refresh your memory?

17 A Yes.

18 Q Can you tell the Jury please about Madison's
19 appearance when you saw her ---

20 A (Interposing) So what ---

21 Q (Continuing) on December first?

22 A Sorry. So when I saw her she was lying on the ICU
23 bed. She was minimally responsive. She had a
24 breathing tube down her and was on mechanical
25 ventilation. She had a feeding tube in place. She

1 had several IV lines put in her at that point. And
2 umm --- and would you like me to go through all the
3 parts of the examination?

4 Q Did you conduct a physical examination?

5 A Yes I did.

6 Q Can you tell the Jury please, what was your finding in
7 the physical ---

8 A (Interposing) On finding ---

9 Q (Continuing) examination? Excuse me.

10 A On finding of the physical examination I umm --- found
11 that her fontanel was tense. She ---

12 Q (Interposing) Can you explain to the Jury when
13 you're talking about fontanel, what are you talking
14 about?

15 A So the fonter --- anterior fontanel is the soft spot
16 in a little baby's head. And that is usually
17 supposed to be level or soft. And in her case it was
18 tense meaning there was some sort of extra pressure or
19 concern for --- there's extra --- there's concern for
20 extra pressure there when a fontanel is tense. Her -
21 -- otherwise the rest of her exam, her --- I examined
22 her heart. I listened to her lungs, her abdomen and
23 I wasn't able to elicit whether she was in any pain or
24 not because she was not responsive. But her heart
25 had a regular rate and rhythm. Her lungs were

1 essentially clear. Her abdomen was soft. And
2 examination of her extremities of her skin showed no
3 bruising that I saw at the time.

4 Q Umm --- did you review whether or not any type of
5 blood work or labs had been ordered for her?

6 A Umm --- at that time the blood work that had been
7 ordered was basic med --- basic panels, electrolytes
8 and blood work looking at her white blood count, her
9 hemoglobin, that sort of thing.

10 Q Doctor Dev, when you were given a history by the
11 parents was anything given to you in the history umm -
12 -- referring to MRSA?

13 A No.

14 Q What is MRSA?

15 A MRSA is methicillin-resistant Staphylococcus aureus
16 which is a bacteria.

17 Q Eventually was there a lab done of the cerebral spinal
18 fluid of Madison?

19 A Yes.

20 Q Okay.

21 And was there any evidence in the cerebral spinal
22 fluid umm --- testing showing that the MRSA was in her
23 cerebral spinal fluid?

24 A Could you repeat that question?

25 Q Yeah. I'm sure I haven't worded it very artfully.

1 Was there any evidence of the infection in her
2 cerebral spinal fluid?

3 A No.

4 Q Okay.

5 Were you able to review radiological records umm
6 --- including CT's and MRI's at some point?

7 A Yes I was.

8 Q Okay.

9 And what dates of CT scans did you review?

10 A May I review --- may I look at my notes?

11 Q Would that refresh your memory?

12 A Yes it would.

13 Q Yes.

14 Does that refresh your memory?

15 A Yes.

16 Q Yes, go ahead.

17 A She had a CT scan done on November thirtieth (30th),
18 two thousand and six (2006). And a CT scan done on
19 December second, two thousand and six (2006), and she
20 had an MRI done on December first, two thousand and
21 six (2006).

22 Q Did you also review a skeletal survey from December
23 first of two thousand and six (2006)?

24 A Yes, I did.

25 Q Tell the Jury please what a skeletal survey is?

1 A A skeletal survey is umm --- x-rays of essentially
2 every bone in a child's body that is done with
3 dedicated films to all parts of the child's skeleton.
4 And it has good resolution. And is basically done to
5 look for any evidence of fractures that one may not
6 have identified on a physical exam or examination of
7 the child.

8 Q What were the results of the skeletal survey?

9 A The skeletal survey showed that there were no
10 fractures.

11 Q Did you have an opportunity to review any ophthalm ---
12 opthiomol --- opthamologil --- any ophthalmology
13 reports?

14 A Yes I did.

15 Q Okay.

16 And what was the result of those tests?

17 A The result of that exam, of the ophthalmology
18 examination was that she had diffuse intraretinal and
19 preretinal hemorrhages in her right eye.

20 Q What does that that mean diffuse intraretinal
21 hemorrhages?

22 A What that means is that there's retinal hemorrhages
23 throughout the eye in the way the ophthalmologists
24 describe as all quadrants of the eye and in different
25 layers of the eye, of the back of the eye as well.

1 Q You mean the retina?

2 A Yes.

3 Q Did you have an opportunity to review previous imaging
4 that had been done on Madison? An MRI from August of
5 two thousand and six (2006) and a CT scan from
6 September eleventh (11th), two thousand and six?

7 A Yes.

8 Q Now Doctor Dev, after you had the opportunity to
9 obtain the history, to look at the records, to look at
10 all the testing, umm --- did you form an opinion and
11 diagnosis in regards to Madison?

12 A Yes.

13 Q What was that?

14 A My opinion was that this uh --- that Madison's
15 condition was more likely the result of abusive head
16 trauma.

17 Q What is abusive head trauma?

18 A Abusive head trauma is trauma to the --- the brain and
19 around the brain due to inflicted trauma.

20 Q And can you tell the Jury what led to that opinion?

21 A What led me to that opinion was a number of things.
22 First we had a history that was inconsistent with the
23 findings. And on top of that we had a history that
24 changed over time. The history that was given to me
25 was very --- was different than the history that was

1 given to some of the other physicians that had come to
2 speak with her parents. And then the physical exam
3 findings of the subdural hemorrhages as well as the
4 retinal hemorrhages.

5 Q Okay.

6 How was it that you were able to determine that
7 the history had changed over time?

8 A I was able to determine that by looking at the history
9 that I had and compared it to the information that
10 other physicians had documented in their notes.

11 Q How many different histories did you find?

12 A Four.

13 Q Other than your history, what other histories did you
14 note? Who was --- who were the others given to?

15 A The others were given to the neurologist, the ---

16 Q (Interposing) Which neurologist?

17 A Doctor Steve Leber.

18 Q Now what is the difference between a neurologist and a
19 neurosurgeon?

20 A A neuro --- a neurologist is a physician that
21 specializes in the brain but more the function of the
22 brain. Basically they work in the area of seizures,
23 headaches, after, possibly after head trauma. And
24 sort of that area versus neurosurgeons who sometimes
25 their work overlaps. But neurosurgeons are surgeons

1 who then have the ability to operate on the brain as
2 well.

3 Q So Doctor Leber was a neurologist?

4 A Yes.

5 Q Okay.

6 Who else did you see there was a different
7 history given to?

8 A The neurosurgeon.

9 Q Which one?

10 A I believe it was Doctor Maher. I can check my notes.

11 Q Would your notes refresh your memory?

12 A Yes, they would.

13 Q Yes.

14 THE COURT: Actually we can get the list of
15 whatever it is and then we can call it at that point,
16 if that would be a good point to break.

17 THE WITNESS: Sorry. The neurosurgeon was
18 Doctor Linda Yang.

19 Q **(By Ms. Pope-Starnes, continuing)** Would you spell
20 the last name for us?

21 A Y A N G.

22 Q Okay.

23 So Doctor Leber, Doctor Yang, yourself, and who
24 was the fourth?

25 A The pediatric ICU physician.

1 Q And who was that?

2 A Doctor Gail Annich, A N N I C H.

3 THE COURT: Okay. All right.

4 Ladies and Gentlemen, Doctor, everyone else,
5 we'll break at this time. It's now four-thirty
6 (4:30) and we'll resume at uh --- eight-thirty (8:30).
7 Maybe do the same thing. Get here, fingers-crossed,
8 maybe a little bit beforehand and we might get us
9 moving a little bit quicker. So we'll try around
10 eight-thirty (8:30), okay?

11 Have a nice weekend everyone. Thank you very
12 much. Please don't discuss the case.

13 THE CLERK: All rise for the Jury.

14 (Whereupon the Jury was returned to the Jury room.)

15 * * *

16 THE COURT: The record will reflect that
17 the Jury's been excused.

18 Doctor, you're all set.

19 MS. POPE-STARNES: Judge can I just ---

20 THE COURT: (Interposing) Yeah.

21 You're all set Doctor. Thank you.

22 MS. POPE-STARNES: I just wanted to make
23 sure I got this right because I was looking for
24 something.

25 THE WITNESS: I apologize if I delayed

1 things.

2 THE COURT: No problem.

3 MS. POPE-STARNES: You said our schedule is
4 Monday morning, all day Tuesday, Wednesday afternoon
5 and Thursday and Friday all day?

6 THE COURT: Yep. And we're on Tuesday ---
7 You're all set. Thank you.

8 We'll have to talk about Wednesday. I might
9 have the Jury come in a little bit later because I
10 have some PPO's to deal with. So just a hearing that
11 might take a half-an-hour or something like that.

12 MR. WHITE: I thought you were off that
13 docket.

14 THE COURT: Blame my clerks. They ---they
15 insisted I keep a case. And whatever. But so
16 anyways that's the only hiccup in the proceedings I
17 think.

18 All right. Let me read this to Mr. White and
19 Ms. Pope-Starnes. If I remember correctly this is
20 kind of incidental to the proceedings, that thing from
21 U. of M. They asked for me to do an order in
22 response. If they did and if Counsel doesn't have
23 any objection, I would propose the following:

24 First step, Prosecution subpoena and Heather
25 McBurney's release and to accommodate the request of

1 the duces tecum opponent set forth in the attached
2 letter the Court orders nunc pro tunc to the date of
3 the prosecution's subpoena, the deponent to provide
4 all records of Madison McBurney. This order also
5 acknowledges receipt of the above.

6 Any problem with that?

7 MS. POPE-STARNES: None Your Honor.

8 THE COURT: And if you have a copy of that
9 letter, I can attach it and I'll just give you a copy
10 for your records.

11 MR. WHITE: No problem.

12 THE COURT: Thank you.

13 Deputies, thank you for everything.

14 THE DEPUTY: Have a good weekend.

15 THE COURT: Thank you.

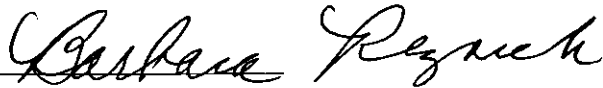
16 (Whereupon the matter was concluded for this day.)

17 * * *

STATE OF MICHIGAN)

COUNTY OF OAKLAND)

I, Barbara Reznick, Court Reporter, do hereby
certify that the foregoing pages comprise a full, true, and
correct transcript of the proceedings had In the Matter of
McBurney before Honorable Daniel Patrick O'Brien in
Pontiac, Michigan on February 22, 2008.



Barbara Reznick, CER 1333

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